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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-seventh session

SUMMARY RECORDS OF THE 831st TO 862nd MEETINGS

Held at the Palais des Nations, Geneva,
from 7 August to 1 September 1989

Volume I

PUBLIC MEETINGS */

Chairman: Mr. LAMPTEY

Rapporteur: Mrs. SADIQ ALI

The list of members attending the session may be found in the report of the Committee to the General Assembly (Official Records of the General Assembly, Forty-fourth Session, Supplement No. 18 (A/44/18), (annex III).

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*/ The Committee also held one closed meeting, the summary record of which (CERD/C/SR.854/Add.1), contained in document CERD/C/SR.831-862 (Vol. II), was issued in restricted distribution.

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ABBREVIATIONS

ECE	Economic Commission for Europe
GDP	gross domestic product
ICJ	International Court of Justice
ILO	International Labour Organisation
OAU	Organization of African Unity
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	Office of the United Nations High Commissioner for Refugees

831st meeting

Monday, 7 August 1989
at 10.50 a.m.

Chairman: Mr. LAMPTEY

OPENING OF THE SESSION

1. The CHAIRMAN welcomed members of the Committee on the Elimination of Racial Discrimination to its thirty-seventh session.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CERD/C/186)

2. The CHAIRMAN, drawing attention to item 4 of the provisional agenda (Consideration of reports, comments and information, submitted by States parties under article 9 of the Convention), said that the timetable set out in the provisional agenda and annotations (CERD/C/186, para. 10) for the consideration of reports of States parties had been replaced by a new provisional timetable (CERD/C/187), which had been circulated to members.

3. In reply to a question by Mr. PARTSCH concerning the inclusion of a report by the Philippines (CERD/C/172/Add.17) for which no provision had been made in the original timetable, Mr. HOUSHMAND (Representative of the Secretary-General) explained that the document in question was a consolidated, updated report combining the eighth, ninth and tenth periodic reports due in 1984, 1986 and 1988 respectively, and had been included in the Committee's agenda at the request of the Government of the Philippines. Its inclusion offset the withdrawal of the fifth and sixth periodic reports of Italy (CERD/C/156/Add.1); those reports had originally been included in the provisional agenda but their consideration had been postponed until the next session at the request of the Government of Italy.

4. Mr. PARTSCH asked why the report of Jordan (CERD/C/130/Add.3) had been withdrawn from the revised timetable.

5. He also drew attention to an apparent error in the note by the Secretary-General (CERD/C/187), concerning the status of submission of reports by States parties, which stated that the reports of the Dominican Republic, the German Democratic Republic and the Union of Soviet Socialist Republics had not yet been received, although they had in fact been distributed to Committee members.

6. Mr. HOUSHMAND (Representative of the Secretary-General) said that the consideration of the sixth periodic report of Jordan had been postponed to the Committee's next session at the request of the Permanent Representative of that country who, in view of the very recent submission of the seventh and eighth periodic reports and their comprehensive nature, had requested that the consideration of all three reports should be scheduled during the next session to allow time for further study.

7. He assured Mr. Partsch that the Secretariat would look into any errors in the note (CERD/C/187).

The provisional agenda, as amended, was adopted.

ORGANIZATION OF WORK

8. Mr. ABOUL-NASR, referring to the system of appointing rapporteurs to make a preliminary examination of reports, suggested that the Bureau might consider what procedure should be followed in the event of comments by the rapporteurs not being received in time for the Committee's consideration of the reports in question.

9. Mr. HOUSHMAND (Representative of the Secretary-General) recalled that the Committee had designated six rapporteurs to prepare the ground for the examination of reports scheduled for consideration at the current session. In view of the extension of the session by one week, the Secretariat, in consultation with the Chairman, had decided that a number of additional reports should be included in the agenda. The six rapporteurs had accordingly agreed to examine another report in addition to the four originally assigned to each of them. So far, written comments and questions had been received from three of the rapporteurs, Mr. Partsch, Mr. Banton and Mrs. Sadiq Ali, on their respective five reports.

10. The CHAIRMAN assured Mr. Aboul-Nasr that due consideration would be given to his suggestion. He thought, however, that the Committee should proceed in accordance with the revised timetable. The rapporteurs' submissions had in fact been received for the reports scheduled for immediate consideration, and he trusted that the others would be received in due course. The Committee had in any case agreed that, in the absence of a rapporteur or in the event of a rapporteur's failure to submit comments, it would follow the same procedure as in the past for the consideration of reports.

The meeting rose at 11.15 a.m.

832nd meeting

Tuesday, 8 August 1989
at 10.20 a.m.

Chairman: Mr. LAMPTEY

STATEMENT BY THE UNDER-SECRETARY-GENERAL FOR HUMAN RIGHTS

1. Mr. MARTENSON (Under-Secretary-General for Human Rights) welcomed participants and wished them every success in their work, for which he pledged his own and the Secretariat's whole-hearted support and assistance.

2. As the Committee had been the first human rights treaty body to be set up under United Nations auspices, it had pioneered the mechanism of monitoring the reporting obligations of States parties to international human rights instruments, and its procedures had influenced subsequent instruments. It had made an important contribution to establishing the concepts of equality and solidarity among peoples and races as part of international law and to protecting and promoting human rights throughout the world.

3. The year 1989 was the twentieth anniversary of the entry into force of the International Convention on the Elimination of All Forms of Racial Discrimination and it was encouraging that the number of States parties had been further increased to 128 by the accession of Antigua and Barbuda, Mauritania and Yemen. Accession was now almost universal, but it was regrettable that only 12 States had so far made the declaration under article 14 of the Convention recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals. He was convinced that such a provision was vital to international human rights protection and that the individual's right to a remedy was the hallmark of international human rights law.

4. He regretted that the Committee's financial situation had not improved, owing to the failure of a number of States parties to meet their financial obligations. The spring session had had to be cancelled but it had proved possible to extend the current session by one week. He thanked members for making time in their busy schedules to attend the extended session and hoped that it would be possible to reduce the huge backlog of pending reports.

5. In its resolution 43/96 of 8 December 1988, the General Assembly had expressed profound concern at the failure of some States parties to comply with their financial obligations and had strongly appealed to all States parties to pay their outstanding contributions and, if possible, to pay their annual contributions before 1 February so as to enable the Committee to function normally. The Secretary-General would continue to inform the members of the Committee at least six weeks before the scheduled opening date of each session what the status of payments of assessed contributions was, whether sufficient funds were available to permit the holding of the session and, if so, how long a session could be financed. Between sessions he would continue to keep the Chairman of the Committee informed of the financial situation and would join him in pressing for payments when the convening of a specific session appeared to be in jeopardy. The prompt payment of assessed contributions was particularly important in view of the budgetary problems faced by the United Nations.

6. Outlining the human rights activities that had taken place since the thirty-sixth session, he said that, from 10 to 14 October 1988, a meeting of Chairpersons of human rights treaty bodies had been held at Geneva, at which the Committee had been represented by its Chairman. A number of recommendations on improving and streamlining the work of the human rights treaty bodies had been made and those recommendations were contained in the report of the meeting (see HRI/MC/1988/1, sect. VII). The report had been submitted by the Secretary-General to the General Assembly for consideration at its forty-third session. The Assembly had decided in its resolution 43/115 to refer the report's conclusions and recommendations, particularly those identified as matters requiring urgent action, to the Commission on Human Rights for priority consideration at its forty-fifth session. The General Assembly would revert to the various issues addressed in the report at its forty-fourth session under a new agenda item entitled "Effective implementation of international human rights instruments, including reporting obligations under international instruments on human rights" and would also consider the possibility of convening another meeting of Chairpersons in 1990.

7. At its forty-fifth session held from 30 January to 10 March 1989, the Commission on Human Rights had adopted several resolutions relating to the effective functioning of bodies established pursuant to United Nations human rights instruments and had taken decisions on several of the Chairpersons' recommendations. It had requested the Secretary-General to entrust an independent expert with the task of preparing a study on possible long-term approaches to enhancing the effective operation of existing and prospective human rights treaty bodies, to be submitted to the General Assembly at its forty-fourth session, and had called for the establishment of a task force to prepare a study on computerizing, as far as possible, the work of the treaty monitoring bodies in relation to reporting by States parties. The Commission had also requested the Secretary-General to report regularly to it on possible technical assistance projects which might be identified by the treaty bodies in the course of reviewing periodic reports of States parties and the Committee might wish to pay particular attention to that matter in dealing with item 2 (b) of its agenda.

8. In his capacity as Co-ordinator for the Second Decade to Combat Racism and Racial Discrimination, he had organized at Geneva from 3 to 6 October 1988 a high-level global consultation on racism and racial discrimination attended by representatives of all sectors of the international community concerned with human rights activities. The recommendations made at that meeting included action by the Security Council to impose mandatory sanctions against the apartheid régime; governmental action to strengthen legislation to make racism a crime under international law; signature and ratification of regional and international instruments condemning racism and racial discrimination; enhanced co-operation and co-ordination among United Nations bodies and entities within the United Nations system in implementing the Programme of Action in order to provide a new input from the relevant agencies and so ensure the Programme's effectiveness. The Centre for Human Rights had been requested to organize inter-agency meetings to consider ways of increasing co-operation and co-ordination to combat racism and racial discrimination. The Chairman of the Committee had participated in the discussions and the resulting report would be available in the near future. In order to publicize the role of the United Nations in combating racism and racial discrimination and to stimulate public support, the Centre had produced a widely distributed Fact Sheet on the global consultation.

9. During the past year the Centre had also produced a number of other fact sheets: on methods of combating torture, on enforced or involuntary disappearances and on communications procedures. In connection with the World Public Information Campaign for Human Rights it had published the report of a United Nations training course on the administration of justice and human rights for Eastern European countries, which had been held in Moscow from 21 to 25 November 1988.

10. On 10 December 1988, the fortieth anniversary of the Universal Declaration of Human Rights, the General Assembly had launched, by its resolution 43/128 of 8 December 1988, the World Public Information Campaign for Human Rights. The central aim of the campaign was to increase public understanding and awareness of what was meant by human rights and fundamental freedoms, what international machinery was available for the promotion and protection of those rights and what efforts were being made by the United Nations to ensure their observance. Within that broad framework, through world-wide educational activities, the public information campaign would seek to create a genuine universal culture of human rights. Legislation, application and information were the mainstays of the United Nations programme for the promotion and protection of human rights, and the continual and constructive interaction and interdependence of those three elements was increasingly regarded as vital to its overall success.

11. He drew the Committee's attention to the work being carried out on advisory services and technical assistance and stressed that strong national infrastructures for the promotion and protection of human rights and fundamental freedoms represented the best way to ensure respect for those rights and freedoms. States must agree to discuss their human rights obligations publicly and must permit investigations to be conducted within their own territory. There was also a need for a compaign to ensure that State legal infrastructures and institutions possessed mechanisms for the protection of human rights so that all States were accountable for their own nationals. In order to enhance collaboration with the relevant national institutions and to encourage and assist them to establish or develop national mechanisms for the protection of human rights, the Centre for Human Rights had expanded its advisory services and technical assistance programme.

12. With the establishment of a Voluntary Fund for Advisory Services and Technical Assistance in the field of Human Rights, the Centre now had the additional resources needed to meet the ever-increasing number of demands. Assistance to States wishing to improve their infrastructure with respect to human rights was given in three ways: specialist advisory services, grants for study and training and national training, and information courses. Attempts were still being made to expand the assistance programme and to adapt it to the specific requirements of requesting States. During the past year, training courses and seminars had been held in many parts of the world and the Centre for Human Rights had assisted in the establishment of the African Centre for Democracy and Human Rights Studies, with which it intended to work closely. It was also involved in four technical assistance projects and hoped that there would be more such projects in future if funds were available. It should, however, be emphasized that a request for assistance from the Centre did not exempt States from monitoring or from criticism by experts to which they might be exposed as a result of allegations of human rights violations.

13. Mr. ABOUL-NASR reminded the Committee that, although the International Convention on the Elimination of All Forms of Racial Discrimination had been in force for 20 years and the number of States parties was rising steadily, racial discrimination was an increasingly serious problem. Since the Second World War, there had been 87 racially inspired wars, in which 15 to 30 million people had been killed. While such wars did not damage highly developed economies, they were a heavy burden for the third world. Racial and religious conflict existed in every continent, causing suffering and death. That situation was largely ignored by the United Nations and did not feature prominently in its programmes. Action was urgently required and the United Nations could learn from the activities of some non-governmental organizations. The Second Decade to Combat Racism and Racial Discrimination should concentrate on bringing about tangible results because, despite the commendable work done by the United Nations in codifying human rights standards, little or no practical progress had been made and the situation remained tragic. He deeply regretted that the Committee was prevented from doing its work properly in such a critical period.

14. Greater endeavours should be made to overcome bureaucratic obstacles and to make full use of the Centre's publications and documentation service.

15. The CHAIRMAN asked the Under-Secretary-General for Human Rights to convey Mr. Aboul-Nasr's concern to the Secretary-General.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4)

Eighth periodic report of France (CERD/C/148/Add.3)

At the invitation of the Chairman, Mr. Bigay (France) took a place at the Committee table.

16. Mr. BIGAY (France), introducing the eighth periodic report of France (CERD/C/148/Add.3), said that France attached great importance to the elimination of racial discrimination and hoped that the delay in consideration of periodic reports would be eliminated. As the years 1984-1985 were covered by the report, he intended to describe developments in French policy from 1986 to 1989. During that period public opinion had become increasingly aware of the importance of combating racism.

17. In 1989, the bicentenary of the Declaration of the Rights of Man and of the Citizens, France had launched many initiatives to combat social injustices, foremost among them racial discrimination. The Prime Minister had established an interministerial unit on the repression of racism to work alongside the Advisory Committee on Human Rights, which was composed of representatives of various non-governmental anti-racist organizations. It was undertaking studies aimed at repressing racism more effectively and publicizing the Government's activities.

18. Some legislative provisions had been improved. The Act concerning Freedom of the Press now prohibited attempts to justify crimes against humanity; the Act concerning Publications for Young People had given the Minister of the Interior powers to prohibit the sale to minors of publications likely to incite them to discrimination or racial hatred; a recent Act had improved the entry and residence conditions for aliens in France. Article 1

of that Act reflected the principles of hospitality and tolerance of France and the banning of racism and xenophobia, and article 2, the role of national education in teaching values based on respect for the individual, his origins and differences. It broadened the categories of beneficiaries having the right to a residence permit. It strengthened the alien's guarantees against administrative expulsion orders.

19. Judicial decisions, whose number varied little from one year to another, reflected the will to interpret the law in such a way as to make racist acts widely punishable. For instance, a Court of Appeal decision of 26 June 1988 concerning a press article stated that the mere fact of presenting persons defined in terms of their origin as deliberately living at the expense of the French economy and resorting to morally reprehensible or legally punishable means for that purpose constituted an incitement to discrimination or hatred against them.

20. France had pursued its efforts to promote the integration of immigrants, into the mainstream of society, in particular through an active policy to provide housing for young aliens leaving their parents' home and through other social and cultural measures. Contracts were being negotiated between the State and regional authorities to facilitate the establishment of foreign communities in urban areas, and substantial support, including financial assistance, was being provided to associations of young immigrants. The integration of immigrants was being promoted through schools, social and cultural activities, the establishment of small enterprises and other economic activities, training and sport.

21. In order to deal with the Committee's earlier questions on developments in New Caledonia, it was necessary to go back over recent events in that territory. In August 1988, in consultation with the main political movements in New Caledonia, the Government, in pursuance of the Matignon Agreements, had decided to implement a policy intended to redress the imbalances affecting the Melanesian community and, after a period of 10 years, i.e. in 1998, to organize a referendum on self-determination. That political will had been confirmed in November 1988 by referendum, by an overall majority of the French people, of an Act ushering in the 10-year preparatory period. All voters registered in New Caledonia on the date of the self-determination referendum and resident in the territory since the referendum of 9 November 1988 would be entitled to take part in the referendum on self-determination.

22. Special measures for the benefit of the Melanesian community had, moreover, been provided for in the Act. They included development contracts, to be concluded between the State and the three provinces of the territory by the end of 1989, designed to promote access to basic and continuing education, taking into account the diversity of cultures, to improve the infrastructure, especially roads, to redress the imbalance between the northern and the southern parts of the territory and provide easier access to remote communities, and to improve health facilities and sanitation, including water supplies, and housing. Moreover, the distribution of State investment between the southern province and the other two economically less developed provinces was to be readjusted, so that one quarter would be allocated to the former and three quarters to the latter.

23. The Government's policy was also aimed at placing greater emphasis on recognition of traditional Kanak custom and culture, with the creation of representative institutions such as the Consultative Customary Council and the Agency for the Development of Kanak Culture.

24. France participated actively in the struggle against apartheid, which it condemned as being contrary to the fundamental values of the Western world. It believed in the need for dialogue between all components of South African society, and supported the various initiatives taken to lay the foundations for that dialogue, especially the release of political prisoners and the participation of political organizations, including the African National Congress (ANC). France's aid to the black communities of South Africa had amounted to nearly 17 million francs in 1988.

25. His country was also committed to promoting dialogue in southern Africa and welcomed recent progress in the negotiations for national reconciliation in Angola and Mozambique. It was in that spirit that France had proposed, on 11 July, that a mission composed of France, Ireland and Spain should visit those two countries. Concerned as it was to seek solutions to the crisis in southern Africa, France provided support for the countries bordering on South Africa, through assistance to the States members of the Southern African Development Co-ordination Conference (SADCC) amounting to 4 billion francs, including 1.5 billion in grants since 1980, when that organization had been established. Pressure was, moreover, being brought to bear on the South African leadership through the restrictive measures adopted by the European Communities. Those measures would be maintained until such time as the expressions of good will by certain South African leaders were translated into practical action.

26. France's long experience in combating racial discrimination made it deeply aware of the need to continue the fight unrelentingly. Each report could contribute new ideas that were useful to all, and it was important for the Committee to ensure that they reached a wide audience. France attached the greatest importance to the Committee's work in effectively combating all forms of discrimination.

27. Mr. PARTSCH, speaking as rapporteur entrusted with the preliminary examination of the eighth periodic report (CERD/C/148/Add.3) of France, said that a number of events had occurred since the submission of the seventh periodic report (CERD/C/117/Add.2) in 1985, as reflected in the eighth report and in the introductory statement by the representative of France. The eighth report had been drafted according to the revised general guidelines, and part I, which was divided into three sections, provided answers to a number of the questions raised when the seventh report had been considered.

28. Section A, outlining policy pursued in 1984 and 1985, referred to the improvement in penal legislation, with particular reference to a circular of the Minister of Justice of 8 February 1984, drawing the attention of the officers of the Public Prosecutor's Department to the necessity of prosecuting racist offences on their own initiative; the representative of France had specified that other similar circulars had since been issued. It also referred to consciousness-raising by the media and the establishment of a new association entitled "S.O.S.-Racism" with a large following among young people. The government-sponsored campaign, "Living Together", had been responsible for more than 400 initiatives to combat prejudices. Section A

also quoted statistics showing that the number of complaints in respect of acts of racism had remained stable at 29 cases for each of the two years covered. Reference was also made to the introduction of a new 10-year resident's card for aliens, entitling the holder to engage in any occupation; an estimated 80 per cent of the alien population would benefit from the new card.

29. Section B, on the application of the Convention in domestic law, added no new information to the seventh periodic report. When the latter had been submitted in 1985, the representative of France had stated that the courts had so far not decided which provisions of the Convention were self-executing and could therefore be applied directly by the courts and administrative authorities. That question would be of practical importance only in cases not covered by French penal legislation. He, Mr. Partsch, had been unable to find any such lacunae, and had come to the conclusion that all cases were covered by the very comprehensive French legislation.

30. Section C, concerning the geographical composition of the population, while showing a breakdown of national groups in metropolitan France, failed to provide a similar ethnic breakdown for the population of French Overseas Departments and Territories. It was also necessary to explain why, since 1973, the population in some of those countries had decreased (Guadeloupe and Martinique) or increased to a lesser degree (Réunion), while in others it had shown a large increase (French Guiana, New Caledonia). Closely related questions were: which of those Departments and Territories were prepared for independence, what steps had been taken to protect and promote the human rights of their populations, and how did their standard of living, health and medical care, as well as of educational facilities, compare with that of metropolitan France? A further question regarding the special status of the Amerindian population in French Guiana was prompted by the admission during consideration of the seventh report that that population did not enjoy full rights as French citizens, as was the case in other Overseas Departments and Territories.

31. The situation in New Caledonia in 1987, a period not entirely covered by the eighth report, gave rise to the question whether the right to equal treatment in the Courts had genuinely been applied to those favouring independence and to the defenders of the present status after the disturbances in that year. While the representative of France had partly answered the question about preparation for independence and the status of human rights and living standards - and it was hoped that that information would be confirmed in the next periodic report - there were reports that there had not been equality of treatment during and after the disturbances.

32. Part II of the report gave information relating to articles 2 to 7 of the Convention. In connection with article 2, more detailed information was provided on the policy pursued to eliminate prejudices, for instance, through the "Living Together" campaign, and concerning the punishments meted out to persons convicted of acts of racism, special mention being made of a decision handed down by the Paris Court on 9 January 1985.

33. In regard to article 3, the report focused on the Government's position in United Nations organizations and bodies, and on humanitarian assistance. The invitation to inform the Committee about France's commercial relations and investment had not been accepted.

34. The information on judicial practices given in relation to article 2 was amplified in the section on article 4. Interesting details were given on publications by the press and its responsibility for publicizing racist lampoons, even in humorous form. Two decisions by Paris courts had sought to draw the line between permissible criticism and incitement to racial hatred. As it appeared from the report that acts of xenophobia occurred frequently, he wished to know whether acts of xenophobia, as committed by the National Front, were punishable under any provisions of Act No. 72-546 of 1 July 1972, whether the circular of the Minister of Justice of 8 February 1984 covered such activities, and whether any procedures of that kind had been instituted by public prosecutors or private plaintiffs.

35. In regard to article 5, ample information was provided on the status of aliens in France, the regulation of the immigration problem in close consultation with the countries of origin and domestic measures to control migratory flows. In no less than 4,131 cases in 1984, employers had been punished for employing clandestine workers without work permits, an issue which had been specifically raised by the Committee during its consideration of the seventh report. The report placed emphasis on educational successes, mainly in vocational training. Not more than 38 per cent of the economically active foreign population was employed as unskilled workers and, of 1,250,000 foreign households, 20 per cent owned their homes, 73 per cent rented them, and only 6 per cent lived in hotels.

36. When the previous report had been discussed, the establishment of a National Council for Regional Languages had been mentioned, and the results achieved to date would be of great interest to the Committee. Specifically, the Committee wished to know what the Council had done to protect regional languages against assimilation.

37. On the question of refugees, he wished to know whether the assurance that France strictly applied the 1951 Convention relating to the Status of Refugees (in particular, its article 33 on "refoulement") was also applicable to Basques.

38. In connection with article 6, the amendment of the Code of Criminal Procedure making it easier for anti-racist associations to institute civil actions in defence of victims of discrimination was a welcome development. The six-page annex to the eighth periodic report of France containing a systematic collection of texts concerning the prohibition of racial acts and the procedural provisions for the protection of victims might serve as a model for other States parties reporting to the Committee. A final question relating to that article concerned the work of the Mediator: had he had occasion to take action in cases of racial discrimination?

39. The information provided on the application of article 7 included a reference to subsidies granted to anti-racist associations which he presumed had been included under article 7 rather than article 2, because such subsidies were intended to support educational and information activities. Detailed information was given on efforts made to promote education in civics, including the teaching of human rights.

40. In conclusion, he said that the report sincerely admitted the existence of racial problems and described the efforts being made to deal with them, and thus did much to enlighten the Committee on the prevailing situation in France.

41. Mr. ABOUL-NASR noted that, according to paragraph 10 of the eighth report (CERD/C/148/Add.3), there were about one and a half million people from North Africa and Turkey living in France, the great majority of whom were Muslims. The controversial book by Salman Rushdie, The Satanic Verses, had been published in France with the authorization of the French Ministry of Culture. Article 4 (a) and (b) of the Convention, however, specifically stated that activities inciting to racial discrimination and hatred should be eradicated, and, in his view, the book had already incited hatred in the form of demonstrations and counter-demonstrations as well as events involving mosques. When the same problem had arisen in the United Kingdom, the Prime Minister had immediately stated that the United Kingdom Government did not endorse the contents of the book, although it had allowed publication in accordance with the principle of freedom of expression. In France, publication with the authorization of the French Ministry of Culture might be interpreted as implying support for the book. He would like to know whether that was the case, and suggested, with reference to article 7 of the Convention, that its publication was not conducive to racial harmony.

42. Mr. SHAHI said he admired the candid approach reflected in the eighth report (CERD/C/148/Add.3) and the evidence it provided of an attempt to follow the great traditions of France in upholding respect for human rights. Like Mr. Aboul-Nasr, he questioned the need to authorize the publication of a book; where freedom of expression existed, in his view, the permission of any Government or department was not required for that purpose.

43. France and other Western European countries had an admirable record of respect for human rights and by singling out the rights of man as the focus of its bicentennial celebrations, France could be said to have made a seminal contribution to freedom, liberty and equality. All European countries, including France and the United Kingdom, were signatories of the International Covenant on Civil and Political Rights, which obligated them to give equal treatment under the law to all sections of the population; in that context, he asked whether France had a law on blasphemy and, if so, whether it applied to all sections of the French population or was restricted to members of a particular religious denomination. Since Mr. Rushdie's book had been published in the United Kingdom, some members of the Church of England had raised the question of the desirability of extending the country's blasphemy law to cover religions other than Christianity. There were also people in the United Kingdom who held that there should be no law of blasphemy at all and that the right of freedom of expression was absolute. In his view, however, that proposition was untenable, since, as Mr. Aboul-Nasr had pointed out, the Convention excluded the right to propagate racist doctrines. The proposition that there was an absolute right to freedom of expression was therefore not sustainable under the rules of international law. Under the auspices of the United Nations, the civilizations of East and West had agreed on a common position based on certain fundamental values exemplified in the Charter of the United Nations and in various conventions, including the International Convention on the Elimination of All Forms of Racial Discrimination. Certain communities in particular countries of Western Europe could not be required to conform to the standards and values of those countries, since the Governments concerned had in fact assumed obligations imposed by instruments that constituted a common ground for different cultures and civilizations. Writers in the Soviet Union, while upholding freedom of expression, strongly disapproved of insults to, and attacks on, religion. If there was a law

against blasphemy in France, he hoped that there would be an opportunity for the one and a half million people in France who professed the Muslim faith to seek legal redress against the insults that had been offered to their religion.

44. Mrs. SADIQ ALI said she had been told that in France the police were responsible for killing at least one Algerian a week, and that the Algerian Ambassador had protested to the French Government. She asked whether those reports were true and, if so, what action was being taken under article 7 of the Convention to modify the attitude of the police.

45. Mr. BANTON, referring to article 6 of the Convention, which provided that States parties should assure to everyone within their jurisdiction effective protection and remedies, said it was sometimes very difficult even for a representative of a reporting State to say just how effective were the protection and remedies provided. One way of measuring their effectiveness was to put the question to the people for whom they were intended. He suggested that future reports might include an initiative along those lines carried out in consultation with anti-racist organizations.

46. Mr. RESHETOV said that two things had struck him in the eighth report (CERD/C/148/Add.3): first, that French legislation was continuously being improved; and secondly, that measures were being taken to mobilize public opinion in the struggle to overcome racial prejudice.

47. He welcomed the recognition in the report of the existence of nationality problems in France. In 1977, when a study on the rights of persons belonging to national minorities 1/ had been prepared for the Sub-Commission on Prevention of Discrimination and Protection of Minorities by the Special Rapporteur, Mr. Francesco Capotorti, the French Government had said that French law did not recognize the existence of any national minorities whatsoever. He asked whether it was still true that, constitutionally, there was no recognition of national minorities in France.

48. Referring to the statement in paragraph 7 of the report, that holders of a "resident's card" could engage in any occupation, he asked whether an alien residing in France could, for example, become the pilot of a Caravelle or the captain of a French merchant vessel.

49. With regard to the large number of refugees and stateless persons mentioned in paragraph 10, he asked for a breakdown of that figure by country of origin and whether the French authorities applied a strict interpretation of refugee status or the looser concept used in the United States. The low number of new requests for work permits mentioned in paragraph 24 (b) contrasted strongly with the figure given in paragraph 10. Did the apparent contradiction mean that many people were working illegally?

50. With regard to the classes in the languages and cultures of immigrant children mentioned in paragraph 26, he asked for data on the countries of origin represented in such classes.

51. Referring to the Act of 1 July 1901 mentioned in section C of the annex, he would like to know whether the words "or aimed at violating the integrity of the national territory and the republican form of government, shall be null and void" (art. 3) applied to any association which sought to achieve independence by legal means or one which engaged in violence.

52. With regard to the Act of 10 January 1936 referred to in section D of the annex, he asked whether there had ever been any organizations in France which promoted intolerance based on national origin.

53. Mr. RHENAN SEGURA, referring to the first sentence of paragraph 5 of the eighth report (CERD/C/148/Add.3), said that he would like to know more about the campaign initiated by the Government, since it could serve as a model to combat prejudices in his and many other societies in which there was latent discrimination.

54. Mr. YUTZIS said that human rights were indivisible, a fact which underscored the important relationship between the International Covenants on Human Rights.

55. With regard to the report under consideration (CERD/C/148/Add.3), he found it paradoxical that the Government of France, which was seeking to combat racism, maintained commercial relations with South Africa, a country that was the epitome of racial discrimination. In his opinion, it was difficult to combat racism unless an end was put to the system of *apartheid*.

56. Mr. BIGAY (France) thanked the members of the Committee for their questions. His delegation would require time for reflection and he therefore suggested that it should be allowed to reply to the questions at the beginning of the following meeting.

It was so decided.

Mr. Bigay (France) withdrew.

ORGANIZATION OF WORK

57. The CHAIRMAN said that the Bureau had reviewed the agenda adopted by the Committee at its first meeting.

58. With regard to agenda item 2 (b), the Committee would have before it the report (HRI/MC/1988/1) of the meeting of Chairpersons of human rights treaty bodies, which had made important recommendations. It would be expected to express its views on the basis of those recommendations, which had been endorsed by the General Assembly.

59. With reference to agenda item 3, the Government of Bulgaria had explained that the submission of its report had been delayed by certain constitutional procedures and had promised to submit it as early as possible in 1990.

60. On agenda item 4, the Bureau had decided that if a rapporteur was unavailable during the session and had not submitted comments on the reports assigned to him, the reports should be considered by the Committee as a whole, in accordance with previous practice.

61. With reference to agenda item 5, communications would be dealt with in closed session. A suggestion had been made that a working group should be set up at the outset to examine the communications and make recommendations to the Committee as a whole. Once the communications had been submitted to the Committee, it could then decide whether such a working group should be established.

62. With regard to agenda item 6, the Committee would have before it a communication on Namibia from the Secretary-General recommending certain action.

63. With reference to agenda item 7, the Bureau recommended that the Committee should make a preliminary review of the work being done by Mr. Banton and Mr. Yutzis. It would then be in a position to take decisions the following year.

64. As to agenda item 8, the Bureau endorsed the timetable adopted by the Committee at the previous meeting.

65. Mr. BANTON said he would have no objection if the Committee wished to make a preliminary examination of agenda item 7 and take a decision at its next session. However, members should bear in mind that it might be possible to approve a text at the current session. His draft closely followed the previous text, which it merely updated, and the Committee might find that there was less to discuss than it had originally thought.

The meeting rose at 12.40 p.m.

833rd meeting

Tuesday, 8 August 1989
at 3.25 p.m.

Chairman: Mr. LAMPTEY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Eighth periodic report of France (CERD/C/148/Add.3) (concluded)

At the invitation of the Chairman, Mr. Bigay, Mr. de Lary and Miss Chapelle (France) resumed their places at the Committee table.

1. Miss CHAPELLE (France), replying to the questions on the Overseas Departments and Territories put by the members of the Committee at the preceding meeting, said that, at present, her delegation could not provide detailed information on the ethnic composition of the population of those departments and territories; it would submit a written reply later. A written reply would also be provided later on the status of the Amerindians of French Guiana; it should be noted that the French delegation had already commented on that question during the consideration of the seventh report of France (CERD/C/117/Add.2).

2. With regard to the future of the Overseas Departments and Territories, she recalled that the French Constitution provided for the unrestricted exercise of the right to self-determination under democratic conditions. In those Departments and Territories, pro-independence opinions were freely expressed and pro-independence parties and movements existed. Freedom of expression was fully guaranteed; but it must be exercised in accordance with the law, and that ruled out acts of terrorism. At present, the idea of independence did not enjoy full majority backing in the Overseas Departments and Territories. During the elections held during the previous year, the political groups in favour of continuing to form part of the Republic had by far obtained the majority of votes.

3. In New Caledonia, however, the situation was entirely different. The political groups there were divided: some wanted to maintain the territory within the institutions of the Republic, while, for others, independence was the only course. In order to take account of that situation, the French Government had made provision for a vote on self-determination to take place within 10 years as from 1988.

4. The role of education in self-determination had to be stressed. In that connection, it must be pointed out that primary and secondary education was within the competence of Overseas Departments and Territories and territorial communities. There were also State universities.

5. In reply to a question concerning the equal treatment of pro-independence advocates in the courts, she recalled that, in New Caledonia in 1988, acts of violence had led to convictions, but, under article 80 of the Referendum Act of 9 November 1988, amnesty had been granted to the persons convicted following events connected with the determination of the status of the island. All those persons had since been released. In addition, an Act of 13 June 1989 had modified the organization of the courts in New Caledonia. The Nouméa court

of first instance now consisted of separate sections, particularly in the north of the island, to avoid an excessive concentration of the system of justice in Nouméa.

6. Mr. de LARY (France), replying to questions by members of the Committee concerning social problems, said it was true that action had been taken against persons who employed foreigners without work permits. At the administrative level, between 1,500 and 2,000 fines were imposed each year. Their amount was indexed according to the minimum guaranteed wage; it was now 30,860 French francs per offence. In addition to those fines, there could be criminal proceedings that might lead to further fines or even convictions.

7. In reply to a question by Mr. Banton, he said that his Government did wish to hear the views of the victims of racial discrimination and would reflect them more fully in its next report. That had already been anticipated by the initiative it had recently taken to increase the activities of the National Commission on Immigrant Populations, headed by the Minister of Social Affairs. That Commission was to meet several times a year and would shed light on abuses by the administrations. The plan for the future was to call it the "National Commission on Foreign and Foreign-born Populations" because, within the next 10 years, many immigrant foreigners would have become French. With regard to Mr. Banton's question concerning remedies, he said that associations could lodge complaints or institute civil actions.

8. In reply to Mr. Reshetov's question concerning occupations open to foreigners who had 10-year residence permits, he said that the only exceptions were for regulated professions (doctors, pharmacists, architects, etc., in the absence of agreements with countries of origin on the recognition of diplomas) and government jobs. However, if a foreigner obtained a French diploma in architecture, for example, he could work as an architect. Negotiations were under way in the European Economic Community on broader access to government employment for foreigners who were nationals of countries of the Community. Those negotiations did not preclude negotiations with other States as well. The profession of captain of a merchant vessel, in particular, was not open to foreigners, even to nationals of countries of the Community, since, in some ways, it involved national security.

9. About 5,000 permanent work permits had been granted to foreigners in 1987 and 6,500 had been granted in 1988. These figures excluded foreign nationals of the member States of the European Community. The number of permits refused was probably roughly the same, but the exact figure was not known.

10. The mother tongues of immigrant children were taught in the schools, but outside normal school hours, on Wednesday or Saturday afternoons. Agreements on that subject had been concluded with Algeria, Morocco, Portugal, Tunisia and Yugoslavia. Such extra-curricular instruction was provided up to the age of 12; beyond that age, children could learn their mother tongue as part of the regular school programme. That was the case of Arabic, Portuguese and Spanish in particular. There were, however, two communities that did not yet have access to that kind of instruction: the Turks because they were not very many in number; and the Yugoslavs because they had several national languages.

11. Mr. Rhenan Segura was to be commended for having drawn attention to the importance of the "Living Together" campaign. Although the campaign was now over, the Government was putting into practice all the experience that had been gained. One of the ideas to which it had given rise was the appointment of local mediators in conflict areas to solve the most immediate problems in buildings, stairways and courtyards. In that connection, he recalled that at the national level, there was a mediator of the Republic; however, the procedure for addressing the mediator was rather cumbersome and he dealt mainly with conflicts between individuals and the administrations. Unlike some countries, France did not have an ombudsman for foreigners.

12. Mr. BIGAY (France), replying to the question concerning the National Front, explained that it was a political party which carried out its activities within the law. It had even had deputies between 1986 and 1988, but, at present, it no longer had representatives in Parliament.

13. Referring more specifically to the problem of incitement to racial hatred, he said that statements by leaders of the National Front, as well as articles in the press that supported the opinions of the National Front, could be prosecuted either ex officio through the Prosecutor's Department or on the complaint of a competent association in the event of defamation, insults of a racist nature or incitement to racial hatred. In that connection, he recalled that a Ministry of Justice circular dated 6 July 1989 gave the Prosecutor's Department specific instructions for the prosecution of any incitement to racial hatred and that the President of the National Front had already been tried and convicted for acts of incitement to racial hatred.

14. Referring to the interpretation of the 1951 Convention relating to the Status of Refugees, as it pertained to political refugees and, in particular, to Basque refugees, he said that it was necessary to understand the political situation of the Basques and to distinguish between the Franco régime and the post-Franco régime, which was regarded as democratic and as offering the necessary guarantees in respect of judicial prosecution. Consequently, it was no longer possible to maintain that a Basque who sought asylum in France qualified as a political refugee. Moreover, article 1F of the 1951 Convention formally denied refugee status to any person who had committed a serious crime outside the country of refuge prior to his admission to that country as a refugee. The Basque terrorists belonged to that category, and that explained why France had agreed to the extradition of Spanish nationals of Basque origin when Spain had requested their extradition, following an entirely legal procedure, which was the extradition procedure used by France and which was in keeping with standard practice at the international level.

15. With regard to the Rushdie affair, he said that he would reply in his personal capacity to the questions that had been put to him. Referring to freedom of the press, he pointed out that no authorization was necessary to publish a book in France. It was thus wrong to think that there had been any kind of preliminary approval by the Government or a member of the Government for the publication of the book in question. In strictly legal terms, however, it was not allowed to say just anything in a book or newspaper article. Freedom of expression was not total and, in France, there were laws which restricted it and prohibited insults, defamation and incitement to racial hatred. Consequently, Muslim associations had lodged a complaint against Salman Rushdie and against his publisher for incitement to racial hatred. It was for the courts of the French legal system to decide whether that

work contained passages or even entire chapters that genuinely constituted incitement to racial hatred. Those courts therefore had to be relied on to apply French law in that particular case.

16. He had been very surprised and shocked to hear a member of the Committee state that the French police might be killing one Algerian a week. It was quite obvious that crimes of that kind would not go unnoticed and would be prosecuted. He said that both the police and French system of justice treated foreign nationals, whether Algerian or of any other nationality, in exactly the same way as they treated French nationals. Criminal law was the same for everyone. An act of violence committed against a foreign national was brought to justice *ex officio*. Disciplinary measures were, moreover, enforceable against police officers who committed such acts of violence.

17. In reply to some questions concerning political refugees, he said that, in January 1989, there had been 181,679 political refugees in France, a figure which represented a net increase as compared to 1985 and to which 2,267 stateless persons must be added. Cambodians, Laotians and Vietnamese were among the most heavily represented nationalities.

18. With regard to questions on the interpretation to be given to the Act of 1 July 1901 on Unlawful Associations and to the Act of 10 January 1936 on the Dissolution of Combat Groups and Private Militias, he said that the act of 1 July 1901 served to dissolve unlawful organizations through judicial means, whereas the Act of 10 January 1936 provided a special procedure of dissolution by administrative order. For example, an extreme right-wing organization which advocated Nazi ideologies had been dissolved by a decree adopted by the Council of Ministers in accordance with the 1936 Act.

19. Replying to a member of the Committee who had asked whether France had adopted a new position concerning national minorities, he recalled that the Government had made a declaration in the form of a reservation in which it had affirmed, *inter alia*, that France was a country where there were no minorities and that article 27 of the International Covenant on Civil and Political Rights was not applicable to the French Republic. The Government stood by that declaration. The Republic had been one and indivisible for a long time and he had never heard a French citizen say that he could have a nationality other than French nationality. He recognized, however, that there might be some regionalism in France, but there was no nationalism as distinct from French nationalism.

20. In reply to the question on *apartheid* asked by the member of the Committee from Argentina, he said that, although the eighth periodic report contained information on that subject, he wished to provide further information concerning France's commercial relations with South Africa. He recalled that the decision adopted in July 1985 to suspend all new investments in South Africa had been referred to in a circular dated 21 May 1986 and that the ban on new investments in that country continued to be in force. With regard to trade, a notice to importers dated 27 September 1986 had banned the import into France of South African iron and steel. In addition, in a decision taken by the Prime Minister on 13 November 1985, coal contracts reaching maturity had not been renewed.

21. Mr. PARTSCH, speaking as rapporteur entrusted with the detailed study of the report of France, said that, since the National Council for Regional Languages existed, he still did not understand why France had made a reservation concerning article 27 of the International Covenant on Civil and Political Rights. That article provided only that persons speaking a language other than the official language could use their own language among themselves. In no case could that article be used as a basis for the establishment of a separatist movement. Was France so intolerant that it could not allow the Basques or the Bretons, for example, to speak their own language within their families? That article could not threaten the unity of France and yet that was the reason which had been put forward in support of the reservation formulated by the Government. Once the National Council for Regional Languages had been established it would have been logical for the President of the French Republic to withdraw that reservation.

22. Mr. SHAHI asked whether there was a law on blasphemy in France and, if so, whether it was possible to go to court to defend any religion whatever.

23. Mr. BIGAY said that that kind of law did not exist in France. With regard to the comment by Mr. Partsch, he said that article 27 of the Covenant could probably be interpreted in several ways, but that Mr. Partsch's interpretation was not quite the same as that of the French authorities. The Ministry of Foreign Affairs, which was the competent authority on the question, had affirmed by that reservation that article 27 might have a possible effect on the unitary aspect of the Republic. It therefore maintained its reservation concerning that article.

24. He did not have all the elements on which to base a reply concerning regional languages, but the Government would send additional information to explain what had been done in that regard. It was quite obvious that all those who had a regional language had the right to use it and there were even secondary school examinations for which the use of such languages was authorized. France was thus making considerable efforts to safeguard regional languages and, in his view, that question had nothing to do with article 27.

25. Mr. RESHETOV personally thanked the French delegation for the efforts it had made to reply so promptly to so many questions. He was satisfied with the answers that had been given. It was obvious that it was not always possible to have identical views on questions such as that of nationality. In any event, the fact that the Government was now actively concerned with settling questions of nationality in as humanitarian a way as possible was quite noteworthy. He would like all countries to present their reports, in the same way as France had done.

26. The CHAIRMAN said that, for the first time, on the occasion of the submission of the eighth periodic report of France, the Committee was using the new system of appointing a rapporteur. The Committee was very satisfied with the report and with the oral replies by the representatives of France. It looked forward with interest to the written replies which the Government had promised to send.

27. He announced that the Committee had completed its consideration of the eighth periodic report of France.

Mr. Bigay, Mr. de Lary and Miss Chapelle (France) withdrew.

Sixth periodic report of Mexico (CERD/C/146/Add.2)

At the invitation of the Chairman, Mr. Marín Bosch (Mexico) took a place at the Committee table.

28. Mr. MARIN BOSCH (Mexico), introducing the sixth periodic report of Mexico (CERD/C/146/Add.2), said that, in accordance with his country's constitutional system, the Convention formed part of the supreme law of the Mexican Union and its implementation was consonant with one of the fundamental principles of the Constitution of the Mexican Republic, namely, equality before the law. That legal principle was guaranteed by Mexican legislation and, in all the reports it had submitted to the Committee, the Government had shown clearly that racial discrimination was contrary to the culture, system of law and institutions of independent Mexico. It had also described in detail the juridical régime established by Mexico to avert any practice that could result in any form of destruction, exclusion, restriction or preference for racial or any other reasons.

29. He recalled that the Mexican nation was a vast cultural mosaic in which the heritage of the indigenous peoples of Central America continued to be part of the everyday reality of a population that was essentially of mixed blood and knew neither intolerance nor racial or ethnic prejudices. However, the colonial past still endured and obliged the Mexican authorities to make every effort to protect the Indian populations at several levels: that of the land tenure system, in order to prevent those populations from gradually losing their lands; that of the environment, with a view to the conservation of natural resources; and that of social welfare, in order to combat the presence of various kinds of middlemen and to strengthen the capacity of ethnic groups to defend their individual and collective rights. That was the reason for the information given in the sixth periodic report of Mexico on the work done in that regard by the National Institute for Indigenous Affairs, a governmental body which was already 40 years old. In that connection, he also mentioned the establishment in 1987 of the Office of Social Affairs for Mountainous Areas in the State of Guerrero and the Office for the Defence of the Indigenous Population in the State of Oaxaca, both entrusted with the task of protecting, promoting and guaranteeing the rights of indigenous populations. In that regard, the new article 10 of the Political Constitution of the State of Guerrero provided that the state authorities should endeavour to involve the indigenous populations in economic and social development, as well as in the preservation and promotion of their cultural heritage.

30. As the sixth periodic report of Mexico dated from 1986, the Mexican authorities had wished to submit to the Committee a document which supplemented and updated some of the information it contained. The Committee would notice that Mexico continued to ensure respect for human rights and was still pursuing its development efforts despite the serious economic crisis which the country had been facing for 10 years. Mexico had in any event been able to preserve democracy and all its inhabitants enjoyed the same rights. Articles 1, 3, 4, 12 and 13 of the Political Constitution, as well as the various provisions of the Federal Labour Act, the Penal and Civil Codes, the Federal Act on Consumer Protection and the Federal Act on Radio and Television constituted a framework designed to prevent any practice that could promote any form of racial discrimination. Therefore, it was not at that level that Mexico had to carry out its action. Rather, its efforts had to focus - and it had realized that

fact - on the reorganization of its social structures, made necessary by the right to development, and, as a matter of priority, on the eradication of poverty.

31. Mr. BANTON, speaking as rapporteur entrusted with the preliminary examination of the sixth report of Mexico (CERD/C/146/Add.2), paid a tribute to the determination with which the Mexican authorities were promoting racial equality in Mexican territory and to the candour they had shown in their dialogue with the Committee. However, it was difficult to accept as totally true the claim in paragraph 4 of the report that "Racial discrimination does not exist in Mexico", at least if the meaning given to "discrimination" was that found in the Convention and defined in paragraph 189 of the report. There must surely be cases where someone could not obtain a job or a service because he was or was not an Indian or was an Indian of the wrong ethnic group. It must also happen that the indigenous populations - 41 different ethnic groups according to the fifth periodic report of Mexico (CERD/C/115/Add.1 and Corr.1), or 56 according to the sixth report - received unfavourable treatment because they were poor, because they had no political influence and because they were ethnically distinctive. He doubted whether the representatives of those populations could endorse the conclusion that discrimination as defined in the Convention did not exist in Mexico.

32. Referring, firstly, to the question of the protection of the rights of indigenous peoples, he noted that the representative of Mexico had repeated in his introductory comments the statement appearing in paragraph 34, subparagraph 6, of the sixth periodic report that the Mexican Government had decided to combat middlemen since excessive middleman activity prevented indigenous inhabitants from fully participating in the overall development process. He pointed out that the problem arose because in economic terms, middlemen sometimes managed to gain a monopoly.

33. In speaking of the protection of the rights of indigenous peoples, mention must be made of specific cases about which the representative of the State party himself might not necessarily be informed. The United Nations apparently planned to establish a post of commissioner for indigenous affairs who would probably have to inquire into the type of incident which he (Mr. Banton) intended to mention with regard to Mexico. He hoped, moreover, that the Committee would soon be informed of the division of labour between the activities of the Committee itself and the functions of the new commissioner in the event that that post was established.

34. Apparently in 60 years of agrarian reform, more than 100 million hectares of indigenous land had been expropriated. Taking as an example the isthmus of Tehuantepec, he asked about arrangements for the recognition by the Agrarian Reform Secretary of the land ownership rights of the major indigenous communities. Were the Mexican authorities satisfied with the protection given to those communities, which defended their land by sometimes using violence against violent acts by the representatives of the ruling party? He asked whether it was true that, when it had been announced in Tokyo that an oil pipeline was to be built across the isthmus, a Mexican official had told the Prime Minister of Japan that it was not necessary to inform the owners of the lands about the construction plans. Furthermore, in February 1988, the Mixe Indian population of Tehuantepec had denounced cases involving violations of privacy, extortion, persecution and the murder of inhabitants of several

communities who had been trying to defend their land. The Mexican authorities should provide the Committee with detailed information on those incidents.

35. Secondly, he referred to the question whether Mexican legislation complied with the requirements of the Convention. During the consideration of the fifth periodic report of Mexico, members of the Committee had noted that, under article 4 (a) of the Convention, Mexico was obliged to enact penal sanctions and one of the members of the Committee had asked whether the Public Prosecutor in Mexico could initiate proceedings on learning of a case of racial discrimination. The replies given by Mexico in its sixth periodic report revealed a misunderstanding concerning the nature of the requirements of the Convention. In paragraph 120 of the report, the Mexican Government said that it met its requirements under the Convention, but that could not be the case if no sanction had been established. Paragraphs 186 to 193 of the report showed that the Public Prosecutor could not initiate proceedings on learning of a case of racial discrimination because such discrimination had not been defined as an offence; that the ratification of the Convention by Mexico was not sufficient in itself to make racial discrimination a criminal offence; that discrimination was not an offence because Mexico had failed to take the necessary supplementary action consequent upon ratification; and that, therefore, Mexico did not comply fully with the requirements of article 2, paragraph 1, and article 6 of the Convention. It should also be noted that one of the objectives of the Convention was to prevent discrimination even in circumstances in which it had hitherto not been manifest and that it was insufficient to rehearse legal provisions without addressing the question whether those provisions were effective in providing protection.

36. Mr. RHENAN SEGURA said he found that the statement in paragraph 4 of the sixth periodic report of Mexico (CERD/C/146/Add.2) that "Racial discrimination does not exist in Mexico" was quite categorical. The statement was so absolute that it gave rise to many fears. If it proved to be true, Mexican society would be the ideal society. However, although that society did have a very strong cultural identity, it certainly was not exempt from "everyday" discrimination in all its many forms, which were impossible to quantify.

37. He would like to know what measures Mexico had taken or intended to take to implement article 7 of the Convention and to combat prejudices leading to racial discrimination, particularly in the fields of teaching and education. In its fifth periodic report, Mexico had referred to an educational programme for all persons intended essentially to promote the teaching of the Spanish language in the Mexican communities which did not speak it fluently. As the Government made no mention of indigenous languages at the present time, he wished to know what measures had been taken to protect those languages and, for example, to enable a person belonging to one of the 41 - or 56 - ethnic minorities listed in the most recent census to express himself in his own language before the courts. Lastly, he asked whether special efforts were being made in favour of those minorities in the field of education and what percentage of persons belonging to one or another of those minorities held higher posts in the administration or in the Mexican diplomatic service, for example.

38. Mr. SONG Shuhua said that he, too, wished to know what measures were being taken in favour of the ethnic minorities in Mexico. In paragraph 15 of its sixth periodic report (CERD/C/146/Add.2), the Government referred to the far-reaching changes that had occurred throughout the twentieth century and

mentioned the increase in life expectancy, the decrease in illiteracy and the extension of primary health care to almost the entire population. He would welcome detailed information concerning the impact of those advances on the ethnic minorities. Paragraph 30 indicated that the indigenous populations experienced some social problems; for example, there was no security of land tenure and the local boss system still existed. If it was those "local bosses" who owned the land, he would like to know how land ownership could be ensured under such a system and whether the authorities planned to take measures to remedy the shortcomings to which reference had been made. He also wished to know to what extent ethnic minorities could participate politically in municipal reform, which was dealt with in paragraphs 143 to 155 of the report.

39. Mr. BRAUNSCHWEIG said that he shared the astonishment expressed by some members of the Committee at the statement by the Mexican authorities that "Racial discrimination does not exist in Mexico". The absence of racial discrimination explained why Mexico had not adopted specific legislation, but Mexico's abstention in that regard had had the result that it did not comply with the requirements of article 4 of the Convention. He endorsed Mr. Banton's comments on that point and would welcome details on what Mexico intended to do to take preventive measures to combat racial discrimination.

40. Mrs. SADIQ ALI thanked the representative of Mexico for the supplementary information he had provided in introducing the sixth periodic report of that country (CERD/C/146/Add.2) and associated herself with the questions put by Mr. Banton. For her part, she was concerned about the implementation of article 5 (d) and article 6 of the Convention, since she had learned about the imprisonment without trial of 15 members of indigenous communities and would like detailed information in that regard.

41. She also asked about the status of the 120,000 Salvadorians who were said to reside illegally in urban areas of Mexico. Were they political refugees, stateless persons or persons who had immigrated for other reasons?

42. As 10 per cent of the population was employed in the manufacture of handicrafts intended for tourists, a sector which represented only 0.1 per cent of the gross national product, she was concerned about the situation of that category of workers and would like to know why that branch of activity accounted for such a small percentage of GNP, whereas it employed a substantial percentage of the economically active population.

43. Mr. FERRERO COSTA thanked the Mexican delegation for having provided information during the oral introduction to update the facts contained in the sixth periodic report (CERD/C/146/Add.2), which dated from 1986. That updating was all the more useful in that, for reasons which did not have to be recalled, the Committee was somewhat behind in its consideration of periodic reports.

44. The unfortunate first sentence of paragraph 4 of the report, about which other members of the Committee had expressed scepticism, did not mean that Mexico had no racial discrimination, since it was clearly recognized in the second part of the report that some problems did exist in that country, as in others. The author of the report had probably meant to say that racial discrimination was not referred to either in the legislation or in the Constitution.

45. It would be useful to have details on the land tenure situation (para. 30 of the report), in order to know whether the current trend was towards a decrease or increase in the amount of land belonging to the indigenous populations.

46. The situation with regard to education, a basic element of any policy aimed at eliminating racial discrimination, should also be explained in greater detail in order to highlight training and teaching programmes that were specifically designed for the indigenous populations.

47. Like other countries, Mexico was experiencing a serious economic and financial crisis which could only hamper measures in favour of the indigenous populations. The Committee did not expect to obtain an assurance that an immediate solution would be found to all the problems, but it was trying to determine which political and legal measures could be taken in order to achieve progress in eliminating racial discrimination. In that connection, he asked whether Mexican lawmakers had recently adopted legal provisions to implement those of article 4 of the Convention.

48. Mr. RESHETOV thanked the Government of Mexico, through its Ambassador, for having submitted a very informative report (CERD/C/146/Add.2). No one would deny that the most important part was the one giving an account of the measures taken in favour of the indigenous populations. That question also aroused keen interest in his own country, the Soviet Union, where the indigenous populations were currently represented in various Government bodies, for example, in the Supreme Soviet. That increased awareness of the indigenous populations stemmed from the decision taken by central Government officials to carry out large-scale operations aimed at reversing the course of rivers which watered lands in the north that were occupied by indigenous populations for whom the water was of capital importance. The project had been abandoned, partly through the action of some very energetic persons who had taken up the defence of the indigenous populations.

49. The protection of indigenous populations was being studied in various United Nations bodies, in particular, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which had set up a working group on indigenous populations. It was regrettable that no co-ordination was being ensured and that the Committee was not being kept informed of the activities of other bodies in its field of competence. The Under-Secretary-General for Human Rights should be urged to ensure the proper dissemination of information, which was necessary to improve the efficiency of the work of United Nations bodies and of the specialized agencies.

50. Mr. SHAHI thanked Mexico for its sixth periodic report (CERD/C/146/Add.2) and the information it had provided orally. He commended the delegation for the frankness with which it had described the problems the Government had encountered in its efforts to improve the plight of the indigenous populations.

51. Although the implementation of article 4 of the Convention by the Government did leave something to be desired, that might be the result of a misunderstanding. Indeed, paragraphs 188 to 193 of the report implied that the Government did not interpret article 4 of the Convention as constituting an obligation for it to take measures for example, to provide for penalties in a legislative text. It was to be hoped that the dialogue which had been

established with that country would make it possible to bring the points of view closer together and that the Government would take account of the Committee's comments concerning article 4 of the Convention.

52. Mr. MARIN BOSCH (Mexico) thanked the members of the Committee for their comments and the interest they had shown in the sixth periodic report of Mexico (CERD/C/146/Add.2). As the Committee was somewhat behind in its consideration of periodic reports and the seventh periodic report of Mexico was to have been submitted in 1988, his delegation proposed, unless there was an objection by the Committee, to reply in the seventh periodic report to all the questions which had been raised. The Mexican authorities would see to it that all the necessary information was provided and would take account of the comments made, particularly on article 4. He could assure the Committee that the statement that racial discrimination did not exist in Mexico would be deleted; he explained, however, that the sentence should be seen in the context of paragraph 4 as a whole, from a reading of which it would be understood that racial discrimination did not exist from the legal standpoint.

53. The CHAIRMAN recalled that, at the twentieth session of the General Assembly, the Chairman of the Third Committee, which had been entrusted with the task of preparing the draft convention, had been Mexican. In plenary, the Mexican delegation had voted against the adoption of the Convention, but, immediately before the closure of the twentieth session, the Government had given instructions to change its vote, thus making it possible for the Convention to be adopted unanimously. That might help to explain the misunderstanding which seemed to be dividing the Committee and the Government of Mexico with regard to article 4 of the Convention.

54. He stressed that the sixth periodic report of Mexico (CERD/C/146/Add.2) had aroused keen interest among the members of the Committee and thanked the Mexican delegation for the details it had provided. The Committee was looking forward with interest to the seventh periodic report of Mexico.

55. He announced that the Committee had concluded its consideration of the sixth periodic report of Mexico.

Mr. Marín Bosch (Mexico) withdrew.

The meeting rose at 5.20 p.m.

834th meeting

Wednesday, 9 August 1989
at 10.25 a.m.

Chairman: Mr. LAMPTEY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Ninth periodic report of Iceland (CERD/C/149/Add.17)

At the invitation of the Chairman, Mr. Eiriksson (Iceland) took a place at the Committee table.

1. Mr. EIRIKSSON (Iceland), introducing the ninth periodic report of Iceland (CERD/C/149/Add.17), expressed his regret at the circumstances which had made it impossible for the Committee to deal in a timely manner with the periodic reports submitted by States parties and hoped that measures could be taken to remedy that situation.

2. With regard to his own country, the delay in consideration had had two consequences. First, the information presented in its ninth report was outdated. Secondly, Iceland had considered it appropriate to delay submission of its tenth report, due in 1988. In so doing, it was inspired by the desire of the Committee to engage in a dialogue with States parties. Without the benefit of consideration of a previous report, and in the absence of adoption of legislative, judicial, administrative or other measures, the periodic reports would be devoid of content.

3. As indicated in part I of the ninth report, no legislative, judicial, administrative or other measures had been adopted during the period under consideration relating to compliance with provisions of the Convention. His country's third periodic report (CERD/C/R.70/Add.5) had described the measures in force in Iceland.

4. With regard to part II, the information on the Ombudsman had been overtaken by events. In accordance with Act No. 13 of 1987, the position of Ombudsman of the Icelandic Althing, or Parliament, had been formally established and the information in section A was therefore no longer relevant. The Althing had laid down further rules for the office on 2 May 1988. The position was modelled on similar offices in Sweden, Finland, Denmark and Norway and adapted to Icelandic circumstances. With regard to the scope of activities, the Ombudsman was responsible for supervising State and local administration and safeguarding the rights of individuals and associations in their dealings with the administration. He also ensured equality of treatment in the administration. There were some limitations on the otherwise broad scope of his work. First, with regard to local government, his competence extended only to decisions which were subject to appeal to a Minister or other State authority. Secondly, the Ombudsman did not deal directly with the activities of the Althing itself. Finally, he did not deal with activities of the courts or with matters which had to be decided by the courts.

5. The Ombudsman could take up a matter in three ways. First, he could act on the basis of a complaint by an individual or association; secondly, he could study a specific matter on his own initiative; and thirdly, more

generally, he could act when he identified some defect in existing legislation or practice. He had the competence to request information and documents from the administration and to call witnesses.

6. With regard to the resolution of matters, the Ombudsman could conclude cases in three ways. First, he could conclude a case when the respective institution corrected or satisfactorily explained the situation; secondly, he could present a report setting out his recommendations; thirdly, he could suggest that the matter should be referred to the courts. Where he identified defects in the law, he could make representations to the Ministry concerned or to the Althing. While it was not yet possible to assess the effectiveness of the office, since it had been in existence for less than two years, it was already clear that concern for the protection of human rights was one of its main priorities. The holder of the office, Dr. Joerundsson, was a recognized expert on human rights and a long-standing member of the European Commission on Human Rights.

7. With respect to other points mentioned in part II of the ninth report, he said, in response to questions raised in the consideration of his country's eighth report (CERD/C/118/Add.20), that article 233a of the Icelandic Penal Code was the only provision relating to article 4 of the Convention and that there was no provision in Icelandic law concerning article 3 of the Convention.

8. With regard to part III, earlier reports had provided information on the Icelandic compulsory educational system. The ninth report made reference to a committee of the Ministry of Education. In fact, at its most recent session, the Althing had proposed certain changes in the system but the necessary legislative work had not been completed. The system was therefore in a state of flux and it would be more appropriate to provide further information on it in future reports.

9. With regard to the Committee's desire for information on Iceland's attitude towards the apartheid régime, he said that, under Act No. 67 of 1988, the import into Iceland of goods originating in South Africa was prohibited, as was the export from Iceland of goods whose final destination was South Africa or Namibia.

10. Mr. FERRERO COSTA, speaking as rapporteur entrusted with the preliminary examination of the ninth periodic report of Iceland (CERD/C/149/Add.17), said he welcomed the work done by Iceland to further the elimination of racial discrimination in the world. In previous reports, it had provided a detailed and comprehensive account of the legislation adopted to prevent discrimination, and in its eighth report (CERD/C/118/Add.20), it had also indicated the judicial and administrative measures taken in that respect.

11. Clearly, there was no perfect society and no State in which racial discrimination had been entirely eliminated. In view of the time that had elapsed since the initial report of Iceland (CERD/C/R.3/Add.39), he thought that it would be appropriate if the Government provided in its next report complete and updated information on the legal and other measures taken to comply with the guidelines of the Committee. It would also be useful if Iceland could include in its next report information on the demographic composition of the country.

12. He congratulated the Government on having decided formally to establish the post of Ombudsman. He noted that in the two years since the establishment of the post on an experimental basis, there had been some cases in which the Ombudsman had exercised his powers to defend the human rights of individuals.

13. With regard to the implementation of article 3 of the Convention, the ninth report did not fully reply to the questions raised by the Committee relating to apartheid. Furthermore, it made no reference to the current status of the relations of the Government of Iceland with the Government of South Africa. On the question of trade, it had been made clear that Iceland prohibited imports from and exports to South Africa. However, he would like to know what was the present policy of Iceland with regard to South Africa and whether it was still possible for South Africans to visit Iceland.

14. Lastly, with regard to article 14 of the Convention, he would like to know the purpose and scope of the reservation made by the Government of Iceland.

15. Mr. BRAUNSCHWEIG, noting that the report referred the Committee to article 233a of the Icelandic Penal Code, said he would like to know whether the article had been applied by courts during the past two or three years. He would also like to know whether the Icelandic Penal Code contained any provisions to deal with discriminatory treatment suffered by persons belonging to a particular ethnic group or country.

16. Mr. ABOUL-NASR said he would like to know the extent of the Ombudsman's competence in regard to the courts. The Committee had been told that the Ombudsman could not be involved in a complaint once it was before a court. However, members had also been informed that the Ombudsman was competent to call witnesses before a court. He would be glad if the representative of Iceland would clarify that point.

17. He would also like to know what would happen if a complaint was brought before a court and the interested party was not satisfied by the court's decision. Would that party have the right to request the Ombudsman to re-examine the case.

18. Mr. PARTSCH noted that the office of Ombudsman in Iceland was largely modelled on the pattern of Denmark rather than that of Sweden, where the Ombudsman could intervene in cases before a court. In that regard, he said that the Swedish system was regarded by many people as involving interference in the work of the judiciary.

19. With regard to plans to combine history and geography as social studies in school curricula, he said that the results of that experiment in his own country had been very disappointing, since students had been found to lack the most elementary knowledge of history.

20. Mr. GARVALOV said that as Iceland's ninth periodic report (CERD/C/149/Add.17) was very brief, it had to be considered in conjunction with the previous report (CERD/C/118/Add.20). In part 1 of the report, paragraph 3 gave the impression that Iceland's current legislation adequately covered all the provisions of the Convention. He asked whether the Government of Iceland was fully satisfied with the present status of its legislation in that respect. He fully endorsed Mr. Ferrero Costa's comments on paragraph 7 of the report and emphasized that attitudes to the South African régime were of great importance in combating apartheid.

21. Mr. EIRIKSSON (Iceland) said that Iceland's three most recent reports had been short, as no new legislative or administrative measures had been adopted. The last detailed report had been the third periodic report (CERD/C/R.70/Add.5) submitted in 1974 and he thought it would be appropriate to include an overview of the current situation in Iceland in the tenth periodic report.

22. Replying to the questions on application of article 233a of the Icelandic Penal Code, he said that there had been no prosecutions under that article during the period under review. Information on the effects of article 233a would be provided in the following report.

23. In reply to the question on the demographic composition of Iceland, he said that the last figures submitted to the Committee were contained in the fifth periodic report (CERD/C/20/Add.2) and referred to the year 1974. Updated information would be given in the following report.

24. He reiterated his country's abhorrence of apartheid. Iceland did not maintain diplomatic relations with South Africa, although it retained an honorary consul in Johannesburg. Travel to and from South Africa was not prohibited and entry visas were granted to South African nationals. Iceland was actively involved in efforts to end the system of apartheid in South Africa. It gave economic support to the so-called front-line States, had consistently voted in condemnation of apartheid in the United Nations and other international bodies and had imposed a trade embargo against South Africa in 1988, which represented a major policy decision.

25. Iceland's reservation with regard to article 14 was intended to prevent the same matter being raised in various bodies. Iceland had endorsed the right to petition in the European Convention on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as well as the International Convention on the Elimination of All Forms of Racial Discrimination and it merely wished to avoid any duplication. Iceland regarded its accession to those international human rights instruments as an important safeguard for human rights within the country.

26. Concerning the national education system, he believed that the trend towards combining history and geography as social studies was now being reversed and, like Mr. Partsch, he welcomed that development. The tenth periodic report would contain information on the changes in the curriculum, which would be fully implemented by the time of its submission.

27. Replying to the questions on the post of Ombudsman, he confirmed that the Icelandic system was modelled on the pattern of Denmark and Norway. A person refusing to give information to the Ombudsman could be brought before a court but the Ombudsman could not launch an investigation on the basis of court proceedings. The Ombudsman had no official role in the judicial process, although he could unofficially consider cases before the courts and bring them to the attention of the Ministry of Justice or the judge concerned, particularly in instances of unreasonable delay. If it was more appropriate for a complaint made to the Ombudsman to be referred to the courts, that was indicated to the plaintiff, who would incur no legal costs through subsequent court action.

28. In 1988 the Ombudsman had received 67 complaints, 37 of them in the last 4 months of the year and had taken up 3 matters on his own initiative. He had begun a detailed analysis of Icelandic administrative law with a view to proposing changes. Many other matters had been dealt with informally. As the post of Ombudsman had only been in existence since 1 January 1988, the following report would contain fuller information on developments in the situation.

29. The CHAIRMAN commended Iceland's decision to assume responsibility for its own reporting obligations in view of the heavy work-load of the Committee. Reference to its action would be made in the Committee's report to the General Assembly. The Committee had thus concluded its consideration of the ninth periodic report of Iceland.

Mr. Eiriksson (Iceland) withdrew.

Ninth periodic report of Venezuela (CERD/C/149/Add.18)

At the invitation of the Chairman, Mr. Taylhardat (Venezuela) took a place at the Committee table.

30. Mr. TAYLHARDAT (Venezuela), introducing the ninth periodic report of Venezuela (CERD/C/149/Add.18), said that Venezuela's regular compliance with its reporting obligations reflected its serious view of its responsibilities and its clear commitment to equality and fundamental freedoms for all individuals. Racial discrimination did not exist in Venezuela and was totally alien to Venezuelans, who were egalitarian by nature and abhorred all forms of discrimination. Venezuela was a multiracial society in which all races, including relatively recent European immigrants, were fully integrated. Venezuelans were proud of their mixed racial origins and did not practise any form of racial discrimination; hence articles 2, paragraph 1 (a), (b), (c) and (d), 5 and 7 of the Convention were not applicable to Venezuela.

31. The principle of equality, enshrined in article 61 of the National Constitution, was at the heart of all Venezuelan legislation. Venezuela's legal system and State organs fully upheld and safeguarded the rights listed in articles 5 and 7 of the Convention. Any law or regulation which violated the principle of equality was unconstitutional and would be repealed by the Supreme Court of Justice. Respect for constitutional rights and guarantees was safeguarded by the Organic Law concerning the Office of the Government Attorney, and the system of amparo (enforcement of constitutional rights), which had entered into force on 22 January 1988, provided redress in cases of any kind of discrimination or violation of any rights under the international instruments to which Venezuela was a party. In response to requests from members, he had brought a copy of Official Gazette No. 28395, dated 3 August 1967, containing the text of the law which incorporated the International Convention on the Elimination of All Forms of Racial Discrimination into Venezuelan legislation.

32. He had the impression that some members of the Committee had not properly understood Venezuela's policy towards its indigenous population. There had never been any discrimination against those ethnic groups but it was recognized that they required special treatment. Such communities were referred to in article 1, paragraph 4, and article 2, paragraph 2, of the Convention, which stated that special treatment for certain racial groups

was warranted in such circumstances as pertained in Venezuela. Members of the indigenous communities were full Venezuelan citizens with all ensuing rights and the policy was designed to integrate them fully into national life. He considered that, at the 738th, 739th and 740th meetings of the Committee at its thirty-second session, as reflected in its report to the General Assembly, 2/ some members of the Committee had raised points which were totally unrelated to the Convention's fundamental objective or had requested more information than was required under article 9 of the Convention. States' reporting obligations were clearly specified in article 9, paragraph 1, and the Government of Venezuela did not believe that a sovereign State could be subjected to questioning about the implementation of its domestic legislation in respect of rights and obligations vis-à-vis nations or aliens. Venezuela had regularly provided the Committee with the information required under article 9; it had co-operated fully and constructively in the examination and analysis of its reports, and intended to continue to do so in the spirit of openness that had always characterized its participation in international human rights bodies. He consequently stood ready to clarify any doubts and provide any relevant additional information that might be required as part of his country's obligation under article 9 of the Convention.

33. Mr. YUTZIS, speaking as rapporteur entrusted with the preliminary examination of the ninth periodic report of Venezuela (CERD/C/149/Add.18), commended the formal presentation of the report and the introduction by the representative of Venezuela, which clarified a number of issues and provided a very broad basis for discussion and reflection not only on the information provided but indeed on the role and aims of the Committee itself.

34. That being said, it was clear that a fundamental difference of opinion subsisted between the Committee and the Government of Venezuela. It might be a question of methodological approach rather than content, but it must be clarified. Venezuela had insisted in the past, and continued to insist, that there was no racial discrimination in that country, and, in paragraph 8 of the report, stated that it had ratified the Convention out of solidarity with other States; for those reasons, as stated in paragraph 15, it did not consider that it was required to comply with articles 2, paragraph 1 (a), (b), (c) and (d), 5 and 7 of the Convention. On the strength of sociological and anthropological evidence alone, it was very difficult for the Committee to accept that subtle forms of racial discrimination did not exist the world over. Inequalities resulting from a country's colonial past - to which Venezuela had referred - might, for instance, be the product of certain forms of conscious or unconscious racial discrimination. There were indeed only a few countries, like South Africa, which applied racial discrimination on a systematic, institutional basis. The subtler forms of discrimination were sometimes linked to questions of social stratification, and for that reason the provision of information on the demographic breakdown of the population was extremely important in order to ascertain a State's compliance with article 5 of the Convention. Indigenous groups were very often those most vulnerable to discrimination. He was glad to see that the figure given for the indigenous population was 142,000 and not 40,000, as in previous reports. Another objectively demonstrated phenomenon in Latin American countries was the rural migration to the cities, and he would like to know the ethnic breakdown of the groups in question and their social level.

35. In that connection, while he personally agreed that the term "race" might be unacceptable, believing as he did that there was only one human race, he disagreed with the objection to the term "ethnic group", since there were undeniably groups which, ethnologically speaking, differed in language, life-style or culture, even though they might be integrated into the population as a whole. Ethnic groups were indeed often synonymous with indigenous groups.

36. A point on which he concurred with the representative of Venezuela and with paragraph 14 of the report, and on which there had perhaps been some misunderstanding by the Committee in the past, was the need in some cases for rules governing access to places inhabited by certain groups; such rules were not racist in intent, but were there to protect the indigenous communities.

37. With reference to article 3 of the Convention, he congratulated Venezuela on its position regarding *apartheid* in South Africa. With regard to article 4 and the controversial issue of the failure by Venezuelan law to recognize racial offences, he saw no progress or change in Venezuela's position. The new Criminal Code referred to in paragraph 58 of the report was not in the Committee's possession. Although he was not a legal expert, he considered that the law had not only a factual but also a preventive function, and in fact legal experts recognized the need for a code of procedure in order to apply the law. He must therefore ask, as the Committee had done before, which judicial organs were competent to deal with cases of racial discrimination. The record of a case concerning a citizen's recourse to the remedy of *amparo* which had come before the Venezuelan Supreme Court and had been sent to the Secretariat stated specifically that, under the Venezuelan legal system, it was not easy to hand down a decision in a case of discrimination because of the unfortunate absence of a law on the subject.

38. Venezuela had not complied with article 4 of the Convention. He could not accept paragraph 8 of the report stating that it had ratified the Convention out of solidarity, since any State ratifying the Convention must comply with its provisions unless it expressly made reservations to any of its articles; States parties' obligations were clearly defined in the 1969 Vienna Convention on the Law of Treaties.

39. The same point applied to article 6 and the question of legal protection; legal machinery must exist to enable citizens to have recourse to the available remedies.

40. Concerning the application of articles 2 and 5, he congratulated Venezuela on its policy towards indigenous communities. The report provided useful information on the indigenous population, in particular, on development programmes. He was pleased to note that 1,379,492 hectares had been allocated in collective title deeds, but wished to know whether any personal title deeds had been granted. A number of other questions remained. What had become of the 19 groups which had not participated in the bilingual programme? Could an explanation be given of the use of the word "assimilation" in paragraph 13, which seemed to embody a somewhat dangerous concept? How many indigenous people had participated in the decisions referred to in paragraphs 24 and 25? How many indigenous people were involved in the National Agrarian Institute? What was the reason for the omission of the federal entities Monagas and Sucre from part II (para. 39) - Socio-economic development programme, infrastructure and endowments - and what had become of the Yanohami project? Had the

situation been resolved with regard to the indigenous population of Pemón, where Protestant missionaries had prohibited the practice of traditional dances? Could an explanation be given of denouncements of torture reportedly inflicted by the police on members of the Piaroa group for which he, the rapporteur, had written evidence? What had become of the Kariñas and Waraos as a consequence of oil drilling in the Orinoco region? Could it be explained why in Bari (Zulia State) the indigenous population now possessed only 1,470 km^2 of land as opposed to 21,300 km^2 in the past? Finally, from his own professional experience he was aware of a policy of penetration into Latin America, including Venezuela, by transnational religious groups whose policy of inducing the indigenous peoples to forgo their traditional life-styles and symbols and replace them by other practices with unclear ideological and political implications was to be denounced. He wished to know if the reports received were accurate and, if so, what measures had been adopted to counter such an intrusion.

41. Mr. ABOUL-NASR said that he wished to place on record his complete disagreement with some of the points made by the representative of Venezuela. The first of those points was that Venezuela had signed the Convention out of solidarity only. Venezuela was not among the countries that had made reservations when signing the Convention, and it was his understanding that all signatory States were legally bound to abide by its provisions. Moreover, the Vienna Convention on the Law of Treaties was very clear on the subject of States' treaty obligations.

42. Secondly, he understood the representative of Venezuela to have said that Venezuela did not feel bound to report on certain articles, or to implement them. The Committee was not the place to make any such reservations, which must be formally submitted to the United Nations and circulated to Member States.

43. The whole point of the Committee's work was to engage in a constructive, mutually informative dialogue on the situation in a given reporting State and on issues requiring clarification. It was understood that the Committee was not a tribunal set up to interrogate a reporting State. Co-operation and dialogue had induced many countries in the past to change their policy. In view of the need for further clarification of that issue, he would suggest that the Committee should not conclude its discussion of Venezuela's report without having a full exchange of views on the subject.

44. Mr. FERRERO COSTA said he had been surprised to hear the representative of Venezuela cast doubt on the Committee's complete freedom to ask questions on specific points relating to compliance with the Convention. Article 9 clearly specified that all States parties undertook to submit reports for consideration by the Committee, which could request further information from the States parties. If the dialogue in the Committee went beyond the content of a report submitted under article 9, that did not constitute an infringement of State sovereignty. The Committee was engaged in a constructive dialogue that was of great importance in the struggle for the progressive eradication of racial discrimination; its responsibility was to ask questions and that of Venezuela to answer them. The sovereignty of Venezuela was not in question; it had expressed its sovereignty by voluntarily accepting and ratifying the Convention.

45. Even if there was no racial discrimination in Venezuela, that did not absolve Venezuela from complying with the provisions of article 4 of the Convention, under which, no matter how little racial discrimination existed, a State's domestic law must include provisions to punish it. It was mandatory for Venezuela to submit a report showing that it was complying with articles 2 to 7 of the Convention. Finally, he asked whether Venezuela was preparing to make a declaration under article 14 of the Convention recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation of their rights. Twelve States parties had already made such a declaration.

46. Mr. PARTSCH said he fully agreed with the views expressed by Mr. Aboul-Nasr. He questioned the statement by the representative of Venezuela that the Committee had misunderstood Venezuelan measures in favour of indigenous populations and that no discrimination existed but only protection. Protection, given paternalistically as in the nineteenth century, could well also constitute discrimination. If 150,000 indigenous people were told that they were being "protected" against the evils of elections until they had learned enough Spanish to understand what the candidates were saying, that meant that their special interests were not regarded as important. He asked whether the Venezuelan Government was aware that other Latin American countries had recently abolished a language examination in Spanish as a requirement for registration as an elector in order to comply with article 5 (c) of the Convention, which called for equality in political rights. Was it possible to deny the vital political right of participating in elections simply because an individual did not understand the main language spoken in the State of which he was a national and spoke only his own mother tongue?

47. Mr. BANTON said that if the Committee was to discharge its responsibilities concerning possible racial discrimination against indigenous peoples, it must sometimes refer to specific allegations. At the Committee's previous session, when the ninth periodic report of Venezuela (CERD/C/149/Add.18) was due to be considered, he had wished to put a question concerning a petition from the Bari people addressed to the President of Venezuela and other authorities, alleging that their land was being taken from them by a colonist and that when officials of the National Agrarian Institute, referred to in paragraph 30 of the Venezuelan report, came to measure some of those lands, the colonist was able to prevent them from carrying out their work. Since he had been unable to raise the matter at the Committee's previous session, he had sent the Venezuelan Government a copy of a document purporting to be a translation of the petition. He asked whether the Venezuelan authorities had received the petition and could tell the Committee of any action taken in connection with it.

48. He endorsed the remarks by Mr. Yutzis, Mr. Aboul-Nasr and others concerning the obligations imposed by the Convention: there were no first- and second-class categories among States parties. However, he personally was not as anxious as some about the use of the word "assimilation" in paragraph 13 of the report. Like Mr. Partsch, he was interested in what was said at the end of that paragraph and in the policies being carried out to ensure that ethnically distinctive groups were integrated into the population so that they could exercise all their rights as citizens. He hoped that in Venezuela's next report there would be more information about the right of indigenous people to stand for election and to vote, and about the number of them who became office-holders.

49. The CHAIRMAN, speaking in his personal capacity, associated himself with the views expressed by the previous speakers.

50. Mr. TAYLHARDAT (Venezuela) stressed that Venezuela recognized its obligations under the Convention and had been fulfilling them properly. It had been submitting its reports under article 9 and would continue to do so in accordance with the requirements of the Convention.

51. With regard to Mr. Ferrero Costa's comments on racial discrimination in Venezuela, he said that Venezuela was prepared to welcome any member of the Committee who wished to verify the situation.

52. He asked Mr. Yutzis to substantiate his charge that Venezuela had not complied with article 4 of the Convention; that charge was a serious one and should be made through the appropriate channel. Article 11 of the Convention provided that if a State party considered that another State party was not giving effect to the provisions of the Convention, it could bring the matter to the attention of the Committee. If there was any suggestion that Venezuela was not complying with its obligations under article 4 or under article 6, to which Mr. Yutzis had also referred, Venezuela was prepared to submit to the procedure provided for in article 11.

53. Mr. Aboul-Nasr had referred to the statement in paragraph 8 that Venezuela had acceded to the Convention out of international solidarity. That statement had been made in order to reaffirm the existing legal position on racial discrimination, and was followed by a series of historical references showing that Venezuela had rejected all forms of racial discrimination even before its independence. In that regard, he drew attention to paragraph 68 of the report, which stated that the undertaking entered into by Venezuela under the Convention must be construed as confirming its repudiation of racial discrimination and apartheid and as an expression of support for peoples struggling against those social evils. One of the reasons why Venezuela had acceded to the Convention was its desire to express its solidarity with those peoples.

54. Mr. Aboul-Nasr had said that no country could claim exemption from articles of the Convention unless it had formulated reservations. That assertion reflected a misunderstanding of Venezuela's position, which was that, since the phenomenon of racial discrimination did not exist in the country, it did not feel obliged to provide some kinds of information. However, it was pointed out in paragraph 16 of the report that Venezuela would try to satisfy the requirements of the Committee in respect of the indigenous populations and of its achievements under the provisions of articles 3 to 7 of the Convention, even though it considered that many provisions of the Convention were not applicable to it, since it did not have a problem of racial discrimination.

55. Mr. Yutzis had inquired about the arrangements for the exercise of the right of amparo with a view to ensuring that it was available to all citizens. On 22 January 1988, Venezuela had promulgated the Fundamental Law concerning Amparo defining constitutional rights and guarantees. Mr. Yutzis had asked what procedure citizens had to follow in order to bring charges of discrimination or of violations of rights: the Fundamental Law concerning Amparo provided that any citizen could address any judge and ask for recognition of his right of amparo; it was not necessary even to go to a lawyer.

56. Finally, in Venezuela's opinion, some of the questions asked by the Committee did not relate to information required in compliance with the Convention. Mr. Yutzis had asked a series of questions specifically concerning indigenous peoples, but in Venezuela those peoples were treated on the same footing as any other citizens. There were also other international bodies which dealt with some of the questions that had been raised: committees existed to deal with torture and with enforced or involuntary disappearances, but to his knowledge no accusations against Venezuela had been brought in either of those bodies.

57. With regard to the petition mentioned by Mr. Banton, he could not say what was the reaction of the Venezuelan Government, but the question was linked to Mr. Ferrero Costa's question concerning Venezuela's position on a declaration under article 14 recognizing the competence of the Committee to receive and consider communications from individuals or groups. Mr. Banton had received a petition from an individual, but Venezuela had not made the declaration under article 14 and therefore was not obliged to answer the accusation in the petition before the Committee. The last sentence of paragraph 1 of that article specified that no communication should be received by the Committee if it concerned a State party which had not made such a declaration.

58. In reply to Mr. Ferrero Costa, he observed that international instruments imposed rights and obligations on the inhabitants of Venezuela but that at present those rights and obligations could be invoked only before Venezuelan administrative bodies.

59. He congratulated the 12 countries which had made a declaration under article 14, including Costa Rica, Ecuador, Peru and Uruguay. However, in Venezuela, citizens had all the legal machinery necessary to make use of their rights and constitutional guarantees against abuse of authority or any other infraction. The right of *amparo* also existed, and Venezuela did not therefore consider it necessary to make such a declaration.

Mr. Taylhardat (Venezuela) withdrew.

60. *Mr. YUTZIS* said that the dialogue with Venezuela was a very important one and he had a number of further questions. He therefore accepted Mr. Aboul-Nasr's proposal that the discussion should be kept open until all the points had been covered.

It was so decided.

The meeting rose at 1.05 p.m.

835th meeting

Wednesday, 3 August 1989
at 3.20 p.m.

Chairman: Mr. LAMPTEY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (*continued*)

Ninth periodic report of Venezuela (CERD/C/149/Add.18) (*concluded*)

At the invitation of the Chairman, Mr. Taylhardat (Venezuela) resumed his place at the Committee table.

1. Mr. YUTZIS, speaking as rapporteur for the ninth report of Venezuela, (CERD/C/149/Add.18), said that he wished to clarify certain points concerning the questions asked of the Venezuelan delegation at the previous meeting. In the first place, in alluding to the disappearance of indigenous peoples the Committee had not been thinking in terms of the phenomenon of enforced or involuntary disappearances, but had wished to know whether the indigenous population had been displaced and whether indigenous communities had had to be dispersed in other parts of the country.

2. On the subject of alleged ill-treatment, according to two publications which had been brought to his notice and which he held at the disposal of the Venezuelan delegation, the victims had been members of indigenous communities, a group that was of particular interest to the Committee. No doubt had ever been cast on the Committee's competence to consider the situation of indigenous populations.

3. Article 11 of the Convention could not be invoked by the Venezuelan delegation, since the members of the Committee served in their personal capacity as independent experts, as was provided for in articles 8 and 9 of the Convention. There was in no sense a dispute between States parties to the Convention, which was the subject of article 11.

4. He welcomed the reply by the representative of Venezuela on the subject of the remedy of *amparo*, which was open to persons who considered that their rights had been violated. He was satisfied that the existence of such a remedy filled the gap referred to by members of the Committee.

5. Finally, a State ratifying any international instrument was required, unless it had expressed reservations on any of its articles, to accept all of its provisions, especially binding provisions such as those in article 4 of the Convention, whereby States parties "undertake to adopt immediate and positive measures". Consequently he was still of the opinion that Venezuela was not fully complying with its obligation under that article.

6. Mr. PARTSCH also stressed the fact that the members of the Committee served as independent experts and could not be regarded as representing their countries of origin. Committee members' questions and comments were not dictated to them by their Governments; it was therefore inappropriate to invoke article 11 of the Convention and, as the representative of Venezuela had suggested, to request that any failure by Venezuela to comply with the Convention should be the subject of a written statement submitted by the States parties.

7. Paragraph 15 of the report (CERD/C/149/Add.18) stated that racial discrimination had been "abolished" by the Constitution, which was puzzling since it hardly seemed possible to "abolish" incidents or acts by means of a legal provision. The Constitution could of course prohibit racial discrimination, but that did not remove the danger of individuals practising discrimination in specific instances. In view of Venezuela's colonial past, it was not to be ruled out that its legal system might preserve certain vestiges of discriminatory provisions. Moreover, it could hardly be asserted, as it was in paragraph 15, that "Venezuela does not belong to the category of State which is required to comply with articles 2, paragraph 1 (a), (b), (c) and (d), 5 and 7 of the Convention", as experience showed that a constitutional provision did not suffice, indeed far from it. The Committee had drawn up guidelines (CERD/C/70/Rev.1) to advise States what information it expected them to furnish in their reports because in their initial reports many States parties had done no more than to indicate that racial discrimination was prohibited by their Constitution. The guidelines did not confer any new obligations but were there simply to highlight obligations under the Convention. The Committee was therefore duty bound to draw the Venezuelan Government's attention to article 4 (a), (b) and (c), which imposed certain obligations on all States parties. Since Venezuela had expressed no reservations, it was bound by all the provisions of the Convention, including article 4.

8. Mr. SHAHI said that he had read with interest the detailed report submitted by the Venezuelan Government (CERD/C/149/Add.18) and thanked the representative for his most informative introduction.

9. It appeared that there was a continuing misunderstanding between the Committee and the State party on the subject of the obligations under the Convention. Whatever might have been Venezuela's reasons for signing that instrument, its ratification, a voluntary and sovereign act, made every one of the obligations it prescribed binding on Venezuela as on all other States parties. By acceding to the Convention, the Venezuelan Government had empowered the Committee to question it on all those aspects of its domestic policy which the latter deemed to fall within its competence. That was why it was difficult to accept the statement in paragraph 15 of the report that the questions asked of the Venezuelan delegation by the Committee during the consideration of its eighth report (CERD/C/118/Add.24) "relate to its implementation of the internal legal standards in respect of rights and obligations vis-à-vis nationals or aliens" and that they went beyond the Committee's terms of reference. The fact was that, even though some of the Committee's questions did indeed relate to the domestic policy of the State party they still remained relevant for any organ responsible for monitoring the implementation of an international instrument, because although all countries possessed a body of penal legislation that might vary in extent but always prohibited various offences, that had never prevented individuals from breaking or overstepping the law. In the case under consideration, it was the Committee's duty to question the Venezuelan Government on the implementation in practice of its legislation concerning indigenous populations, on the precise situation of indigenous persons and on the country's demographic composition.

10. Mr. BANTON specified that he had not petitioned the Venezuelan authorities, as the Venezuelan delegation might have thought, but had merely sent them the text of a petition which had been submitted to the Government by a group of Venezuelan citizens and of which he had read a translated version in a publication by a non-governmental organization concerned with the defence of indigenous peoples' rights. He had thought the document to be of interest because it was representative of the grievances of groups in all parts of the world and highlighted the difficulties encountered by indigenous peoples who often came up against big interest groups encroaching on their lands and consequently depriving them of their livelihood. The document was therefore a particularly representative one and, believing as he did that it would be difficult for the Venezuelan delegation to reply immediately to a question of that kind, he had deemed it appropriate to send a copy to the Venezuelan Government, which might have been able to convey its reply through its delegation. He hoped that the representative of the State party would be in a position to state that the document had been received and examined and, if it had been established that the grievances it contained were well-founded, to describe any measures taken to remedy the situation and prevent a recurrence of such cases. His action had been entirely well-intentioned and the document was merely a means of enabling the Venezuelan Government, on the basis of a specific case, whether well-founded or not, to explain the various aspects of its action on behalf of minorities.

11. Mr. ABOUL-NASR said that none of the Committee's questions or comments should be interpreted as an accusation. The Committee entered into a dialogue with delegations, which served as intermediaries between the Committee and their Governments, conveying the former's comments, suggestions or concerns. At the beginning of the Committee's work, many States parties had been content to state in their reports that their Constitution prohibited discrimination. With the possible exception of South Africa, there was not a single country in the world whose constitution did not include a provision against discrimination, but the point was that if a legal provision was all that was needed, the Convention would have no raison d'être. Even if a State claimed that racial discrimination did not exist within its borders, in ratifying the Convention it undertook to take measures to prevent any cases of discrimination from occurring in the future. That was why the drafters of the Convention and the Committee considered that article 4 was binding on all States parties. To take an example, his own country, Egypt, did not have a set of measures of the kind provided for in article 4, and when the Committee came to examine the eighth, ninth and tenth periodic reports of Egypt, he would not fail to point out that that article was not fully complied with, which was the truth. He was endeavouring to persuade his country's jurists and legislators to adopt measures providing for penalties; that was what the Committee expected of the Venezuelan delegation, which might act as its spokesman. The delegation might also request its Government in future to prepare reports covering all the articles of the Convention without exception.

12. Mr. BRAUNSCHWEIG unreservedly approved the comments of the Committee members who had spoken before him. He too had been most surprised to hear that Venezuela had signed the Convention out of solidarity. A State party's reasons for ratifying an international instrument mattered little; what was important were the obligations which derived from it. With regard to article 4 of the Convention, there were many States parties that did not consider it necessary to enact legislation to prevent and punish acts of

racial discrimination. There was no democratic country in which there were no cases of racial discrimination even if it were expressly prohibited in the Constitution - whence the need to adopt legislation to that effect.

13. Mr. RHENAN SEGURA said that he particularly regretted the difference of opinion between the Venezuelan delegation and the Committee since Venezuela had always played a leading role in the various United Nations human rights bodies. Moreover, Venezuela was one of the few Latin American countries with a stable régime and a proven record of constant respect for human rights. Nevertheless, there was a positive side to the misunderstanding, as it demonstrated the need for the Committee to specify for the benefit of States parties what information should be provided in their reports. In the case of Venezuela, he had no doubt that the gaps that had been found in the ninth periodic report (CERD/C/149/Add.18) would be filled in the following report, and he remained convinced that Venezuela would continue to concern itself with guaranteeing respect for human rights as it had always done in the past.

14. Mr. SONG Shuhua noted that in paragraph 13 of the ninth periodic report of Venezuela (CERD/C/149/Add.18) reference was made to the assimilation of minorities, whereas in paragraph 26 and the following paragraphs the emphasis was more on preserving their identity. Did that not imply some contradiction?

15. The CHAIRMAN, speaking in his personal capacity, said he did not think that there was a problem of communication between the Venezuelan delegation and the Committee, but believed that there was an older misunderstanding relating to the actual interpretation of the Convention. In particular, with regard to article 5, the Venezuelan delegation had had the impression that the Committee was exceeding its competence. His reply was that that article set out fundamental rights for the purpose of ensuring that they were enjoyed without discrimination. The Committee, for its part, must ascertain whether those rights existed in a State party and whether they were exercised on an equal footing.

16. It was unfortunate that the authors of the report had stated, in paragraph 8, that Venezuela had ratified the Convention out of solidarity. What mattered, however, was that Venezuela should comply with its obligations under that instrument. It was desirable for the Venezuelan Government to read the summary records of the current meeting carefully so as to avoid any confusion in the next report. In accordance with article 21, Venezuela could denounce the Convention if it considered itself to be in disagreement with the body ensuring its implementation. It was, however, unlikely that that was the wish of the Venezuelan Government. Rather, it would need to dispel a misunderstanding about the thrust of the Convention. To that effect, it was to be hoped that the Government would consider carefully the views expressed in the Committee during the discussion of its report so that a fruitful dialogue could take place in the future.

17. Mr. TAYLHARDAT (Venezuela) replied that the Venezuelan Government was fully aware that it must provide the Committee with information and would continue to do so. However, if the Government considered, as he had already stated, that some of the questions raised at the Committee's meetings went beyond what was required under article 9, those questions would remain unanswered.

18. As the Chairman had said, there was no problem of communication. The Venezuelan Government was aware of the importance of the Committee's role. More generally speaking, Venezuela, which had been a member of the Commission on Human Rights, was conscious of the important work carried out by the bodies responsible for the protection of human rights. The reason why the Venezuelan delegation considered that it was not required to answer the questions asked by Mr. Yutzis about indigenous populations - despite his clarifications, for which he was to be thanked - was that those questions related to State policy towards the indigenous populations, which was in no way discriminatory.

19. In reply to Mr. Song Shuhua, he said that the main thrust of paragraph 13 of his country's report was the "gradual incorporation" of the indigenous communities. In that connection, the Venezuelan Government was endeavouring to reconcile the incorporation of those communities into national life with the protection of their traditional way of life.

20. Mr. Partsch had asked whether paternalism was still practised towards indigenous persons. He reminded Mr. Partsch that paragraph 31 of the report stated that that traditional attitude towards the indigenous population had been "reversed once and for all"; it was also stated that the new policy had, among other things, enabled the indigenous population to participate in agrarian reform progammes.

21. The contention at the previous meeting that Venezuela was not fulfilling its obligations under article 4 of the Convention was a grave one and called for serious thought. Any member of the Committee claiming that Venezuela was not complying with a provision of the Convention must justify his opinion. If he produced proof that that opinion was well-founded, Venezuela would submit to the procedure provided for in article 11; it must however be remembered that, as provided for in that article, the procedure against a State must be brought by another State and not by the Committee or one of its members. However that might be, Venezuela would respond to Mr. Yutzis' objections in its next report.

22. The statement that the Venezuelan State had ratified the Convention out of solidarity must be understood in the context of the report; in paragraph 8, it was indicated that Venezuela had ratified the Convention "in order to reaffirm Venezuela's existing legal position on racial discrimination".

23. Mr. Banton had spoken about a letter he had written to the Ministry of Foreign Affairs of Venezuela on the subject of the treatment of the indigenous population. The actions referred to in that letter had been reported by a non-governmental organization. In that connection, he (Mr. Taylhardat) said that his Government respected non-governmental organizations, which were often the mouthpieces of mankind's conscience and played a very useful part in the work of the bodies responsible for the protection of human rights. However, the letter in question concerned not a case of racial discrimination, but a wrongful act committed by a landowner, not necessarily on racial grounds. Venezuela had the necessary legal instruments to ensure that justice was done to all its citizens; the complaint could therefore give rise to the remedies provided for by the law. He assured Mr. Banton that he would inquire into the action taken on his letter.

24. The Chairman had said that the Committee must satisfy itself that the rights set out in article 5 of the Convention were being applied. Those rights, among others, were protected in Venezuela not only by the Constitution

but by all the legal machinery established to ensure respect for the rights of citizens. For instance, Venezuela guaranteed respect for the rights set forth in article 5 (a) to (d) (equal treatment before the tribunals, protection of citizens against government officials, participation in elections, etc.). Those rights were exercised without any discrimination whatsoever, including racial discrimination. Generally speaking there was no racial discrimination in Venezuela; there might be occasions where individuals suffered a violation of their rights, but in that case there were remedies available to them.

25. Responding to the comment made by Mrs. Sadiq Ali, he said that the editing of his country's report had in some cases altered the meaning of some passages. In the original text of the paragraph she had mentioned, the reference was not to the International Convention on the Elimination of All Forms of Racial Discrimination, but to ILO Convention No. 111, the Discrimination (Employment and Occupation) Convention, 1958.

26. He believed that he had answered all the questions which had been raised, but he was naturally at the disposal of Committee members to provide any further clarification which they might deem necessary.

27. Mr. FERRERO COSTA thanked the representative of Venezuela for his replies and explanations. The dialogue had been fruitful and positive, and it was to be hoped that the various statements made would clear up existing misunderstandings.

28. He requested that the following periodic report of Venezuela should take account of the four comments which he was about to make. Firstly, the representative of Venezuela had said that Mr. Yutzis' questions on the application of the Convention to indigenous populations were irrelevant as the Convention did not make reference to indigenous persons. However, he (Mr. Ferrero Costa) believed that article 2, paragraph 2 of the Convention, which he quoted, established a legal basis for the Committee to ask questions relating to indigenous populations. Secondly, the representative of Venezuela did not seem to understand the reasons for the Committee's opinion that the Government was not complying with the provisions of article 4 (a) of the Convention. None the less, the Committee was clearly justified in holding that view so long as the Government refused to declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, as required by that article. It was the Committee's responsibility to ensure that each State party moved towards full implementation of all the Convention's provisions, including those of article 4. Thirdly, the representative of Venezuela had said that if the Committee judged that his country was not complying with its obligations under the Convention, it could make use of the procedure provided for in article 11. However, recourse to that procedure was the prerogative of a State party to the Convention, not of the Committee and, in actual fact, the point at issue was whether the Committee should mention that the provisions of article 4 (a) had not yet been implemented in its report to the General Assembly. It also had the option of bringing that fact to the attention of the reporting State so that it could be taken into account during the preparation of the following report. Lastly, the Convention obliged States parties to adopt a series of legal standards and to pursue a policy aimed at putting those standards into practice. The requisite standards did indeed feature in the Constitution of Venezuela, but they were not reflected in the life of its society. Differences sometimes arose between legislation and social practice, and it was the latter which had to be changed if racial discrimianation was to be curbed.

29. Mr. RESHETOV said that he had followed the constructive exchanges of conflicting views between Committee members and the representative of Venezuela with considerable interest. He wished to make a comment on paragraph 8 of the report (CERD/C/149/Add.18) which included the assertion that "when the Venezuelan State ratified the Convention, it did so out of solidarity". He agreed with the representative of Venezuela that the statement did not imply that the Government had ratified the Convention without intending to apply it. The wording merely expressed the will to show solidarity with the international fight against racial discrimination.

30. Mr. TAYLHARDAT (Venezuela) asked Mr. Ferrero Costa, who had referred to the Convention with regard to indigenous populations, to indicate to him which article explicitly mentioned such populations.

31. Mr. FERRERO COSTA said that he had quoted article 2, paragraph 2 of the Convention which, although it did not specifically refer to indigenous populations, covered cases such as those of indigenous and minority groups.

32. Mr. TAYLHARDAT (Venezuela) said that all Venezuelans, whether indigenous or not, enjoyed the same rights and privileges. The Venezuelan State had taken some measures to safeguard certain groups because it believed that they required special protection.

33. Concerning the allegation that the Government was not applying the provisions of article 4 (a), he said that there was no time-limit on that obligation. The Venezuelan Executive had informed the Legislature that it would be desirable to include provisions meeting the requirements of article 4 (a) in the revised version of the Penal Code. Revision of a Penal Code was a lengthy process and, while the Government was aware of its obligation, implementation would take time. He had noted the Committee's statement that Venezuela had not honoured its obligations under article 4, as that was a very serious accusation which he would convey to his Government. The Government of Venezuela followed the Committee's work very closely and was fully resolved to apply the Convention in its entirety and article 9 in particular.

34. The CHAIRMAN thanked the representative of Venezuela for the goodwill and spirit of co-operation which he had shown. The experts had taken a similar attitude to other countries during consideration of their reports because article 4 of the Convention was one of the most difficult articles to implement. When the Committee had begun its work, countries had taken widely varying approaches to article 4, but they had gradually recognized the need to incorporate provisions meeting its requirements into their legislation.

35. Members of the Committee had taken a keen interest in the report of Venezuela, resulting in a fruitful dialogue which he hoped would continue in future.

36. Mr. ABOUL-NASR asked whether, in accordance with article 9, paragraph 2 of the Convention, following its consideration of the report of Venezuela, the Committee would make general recommendations to the State party concerned. The Committee seemed to have reached a deadlock: Committee members wished to obtain more information on some issues but the representative of Venezuela was reluctant to provide that information because he believed that the Committee was not competent to examine the matters in question. He therefore asked the

Chairman not to conclude consideration of the report of Venezuela so that further exchanges of views could take place and a mutually acceptable solution could be found.

37. The CHAIRMAN said that the views which had been expressed during the meeting would be reflected in the summary record. The representative of Venezuela had duly noted the questions asked by Committee members and it was to be hoped that the Government of Venezuela would take account of those questions in preparing its following report. It was not necessary to take any additional decisions.

38. Mr. FERRERO COSTA supported the Chairman's view. A valuable dialogue had just taken place and it was vital to ensure that the Government had fully understood the attitude of Committee members and that their comments would be taken into account in its following report. It would not be appropriate to question the competence of the Committee in certain areas or to transmit specific recommendations on Venezuela to the General Assembly.

39. The CHAIRMAN said that the Committee had concluded its consideration of the ninth periodic report of Venezuela (CERD/C/149/Add.18).

Mr. Taylhardat (Venezuela) withdrew.

Ninth periodic report of Madagascar (CERD/C/149/Add.19)

At the invitation of the Chairman, Mr. Radaody (Madagascar) took a place at the Committee table.

40. Mr. RADAODY (Madagascar) introduced the ninth periodic report of Madagascar (CERD/C/149/Add.19). Since the submission of the eighth periodic report (CERD/C/118/Add.10), the Malagasy legal system had undergone little change. The Malagasy Legislature was endeavouring to embody the main provisions of the Convention in standards of national law and had taken account of some comments made by the Committee which were now reflected in the positive law of Madagascar. He would attempt to answer any questions which might be asked. If he was unable to supply all the details requested, he would transmit the questions to the Malagasy authorities, which would provide the desired information in the following periodic report.

41. In the absence of Mr. Foighel, the rapporteur entrusted with the preliminary consideration of the ninth periodic report of Madagascar, the CHAIRMAN invited members of the Committee to put their questions directly to the representative of Madagascar.

42. Mrs. SADIQ ALI said that paragraph 16 of the periodic report of Madagascar stated that "all the inhabitants of the territory, whether nationals or aliens, are living together peacefully". She considered that to be a misrepresentation of the facts, since violent racial disturbances had taken place in Madagascar in February 1986, directed mainly against the Indo-Pakistani and Chinese communities. She inquired as to the current status of those two communities in racial terms.

43. Mr. PARTSCH noted that while the Constitution of Madagascar now provided a number of fundamental rights, several of the guarantees required by article 5 of the Convention, particularly the right to leave and to return to

one's country, the right to own property, the right to freedom of association, the right to equal pay for equal work, the right to form trade unions, and the right to social security were still not included in the Malagasy legal system. Article 12 of the Constitution was positive in explicitly proscribing discrimination but, as yet, article 4 of the Convention was only partially reflected in Malagasy legislation since the act of discrimination was only punishable by law when linked to defamation. Furthermore, the provisions of article 4 (b) of the Convention prohibiting organizations and organized propaganda activities which incited racial discrimination had not been incorporated in Malagasy legislation.

44. He also understood that Organic Law No. 3 of 1959 prohibited some people from exercising the right to vote in Madagascar. He requested details on the persons covered by that prohibition and the reasons for its existence.

45. There were plans to reform and simplify the legal system in Madagascar and he sought assurances that simplification would not lead to the elimination from the Code of Penal Procedure for example, of all the guarantees concerning the rights of the defence.

46. Mr. BRAUNSCHWEIG, supplementing the question asked by Mr. Partsch on the application of article 4 of the Convention, noted that the bulk of the relevant Malagasy legislation related to violations of the laws governing the press. He asked whether the new Penal Code would contain other provisions punishing, for instance, the refusal to provide housing or other services or certain infringements of employment legislation, which were also required by article 4 of the Convention.

47. Mr. RADAODY (Madagascar), replying to Mrs. Sadiq Ali, admitted that the cohabitation of different ethnic groups did cause some problems in Madagascar. However, the racial disturbances to which she had referred had been economically rather than racially motivated. Most of the Indo-Pakistani minority in Madagascar were retailers or wholesalers and that group had been held responsible for serious food shortages by a mob undeniably manipulated by certain political groups. However, the Government had always accepted its responsibilities and protected minorities when necessary, as had been shown by the fact that several members of the security forces had been killed during the disturbances in question. It should also be noted that the overwhelming majority of the Indo-Pakistani community, many of whom had come to Madagascar as refugees after the partition of India, had not left the country. The community's major role in the Malagasy economy had in no way diminished and, furthermmore, Malagasy legislation made it possible to prevent a recurrence of the disturbances.

48. He said that he would convey Mr. Partsch's questions to the Malagasy authorities so that they could provide the detailed replies requested. However, he was in a position to state that the right to vote was withheld only from persons who had forfeited their civic rights. He reminded members of the Committee that the simplification of the legal system had been a matter of necessity. Prior to the colonial era, Madagascar had possessed an ancient legal code containing more than 400 articles which had been supplemented by imported French law and, subsequently, the new provisions of colonial law. The essential revision had been under way for around 10 years and was not yet completed. In particular, there was a continuing debate in Madagascar on the

existing system of collective responsibility. Reform of the administration and administrative law was also in progress and if the Committee so wished he would provide it with revelevant details.

49. He agreed with Mr. Braunschweig that in the past the Malagasy Legislature had been very concerned with violations of laws governing the press in order to safeguard national unity and prevent the dissemination of ideas likely to aggravate tribalism and foment ethnic division. However, censorship had since been totally abolished and the Legislature, always anxious to respond to the Committee's comments, would undoubtedly establish a provision in line with the requirements of article 4 of the Convention as soon as possible. Following a similar procedure, article 115 of the Penal Code which prescribed penalties for violations of individual freedom or civic rights had already been redrafted and made broader in scope, a marked improvement on the existing system. He would request the competent Malagasy services to transmit all relevant details to the Committee.

50. Mr. PARTSCH said that it was not necessary for the following periodic report of Madagascar to describe all the changes made to the revised legal system. It should merely refer to those items which were relevant to the application of article 6 of the Convention.

51. Mr. YUTZIS said that neither in the ninth periodic report (CERD/C/149/Add.19) nor in the summary records of the consideration of its previous reports had he found any information on the development of social law in Madagascar.

52. Mr. RADAODY (Madagascar) said that the right to work was very prominent in the Malagasy Constitution although, of course, there was some difficulty putting it into practice.

53. The CHAIRMAN said that the Committee had thus concluded its consideration of the ninth periodic report of Madagascar (CERD/C/149/Add.19).

Mr. Radaody (Madagascar) withdrew.

The meeting rose at 5.20 p.m.

836th meeting

Thursday, 10 August 1989
at 10.15 a.m.

Chairman: Mr. LAMPTEY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Ninth periodic report of Poland (CERD/C/149/Add.20)

At the invitation of the Chairman, Mr. Towpik (Poland) took a place at the Committee table.

1. Mr. TOWPIK (Poland), introducing the ninth periodic report of Poland (CERD/C/149/Add.20), stressed the importance which his Government continued to attach to the consistent implementation of the provisions of the Convention. The protection of human rights, like the elimination and prevention of racial discrimination in all its forms and manifestations, was a firmly established concept in the Polish legal system.

2. The basic legal provisions set out in the ninth periodic report remained unchanged: they ensured the conformity of Polish legislation with the provisions of the Convention. Recent changes in the Polish legal system and the general democratization of life were contributing to better protection of human rights in Poland and creating better conditions for the continuous prevention of any form of discrimination against persons or groups of persons.

3. Among the most significant of those recent changes were first, the Act establishing the Constitutional Court, which had entered into force in January 1986. The Court's main function was to rule on the conformity with the Constitution of laws and other legislative acts adopted by supreme and central State agencies. For example, the court had in several cases placed the Council of Ministers under an obligation to modify legislative acts against which appeals had been lodged. There had also been one case related to discrimination, though the discrimination involved was on the basis of sex. A complaint had been submitted by a woman candidate for the Academy of Medicine concerning the Ministry of Health regulation requiring that men and women should be admitted in equal numbers, a regulation which had created a problem, since more women than men were passing the qualifying examinations. The Constitutional Court had ruled that the regulation violated the principle of sex equality contained in the Constitution.

4. Secondly, the competence of the Supreme Administrative Court had been further extended. A citizen who considered that his rights had been violated by an administrative decision could have recourse to the civil courts or, in serious cases, to the Supreme Administrative Court. That Court, although a relatively new institution established in September 1980, played a very significant role. Its judicial supervision over administrative activities had been defined very broadly to cover about 90 per cent of all matters on which administrative agencies took decisions.

5. Thirdly, there had been an unprecedented extension of the competence of the ordinary courts to cover an increasing number of matters previously dealt with by extra-judicial agencies, such as the registration of enterprises, associations and trade unions, and disputes between enterprises.

6. Fourthly, an office of Spokesman for Civic Rights, comparable to that of ombudsman, had been established by a bill passed on 15 July 1987, which stipulated inter alia that the Spokesman would uphold the rights and liberties of citizens laid down in the Constitution and other legislation by determining whether, as a result of the action or inaction of organs, organizations and institutions required to observe and implement those rights and liberties, there had been an infringement of the law on the principles of social intercourse and justice. The purview of the Spokesman thus embraced a wide sphere of relations between State organs and citizens. The Spokesman - currently a woman - was appointed by Parliament for a period of four years. She was completely independent of all State organs, responsible only to Parliament and immune from criminal prosecution, arrest or detention without the consent of Parliament. She could not hold any other employment or public office with the exception of a seat in Parliament.

7. The changes mentioned in the Polish legal system were especially important from the point of view of article 6 of the Convention. They originated in the conviction that it was not enough to have good laws; it was equally important to secure their proper implementation.

8. Apart from those changes, significant improvements had been made in the sphere of human rights themselves. First, on 7 April 1989, the Polish Parliament had adopted a new law on associations, which abrogated a Decree in force since 1932. The new act created better conditions for full implementation of some of the rights and freedoms under article 5 of the Convention and was also important from the standpoint of article 4. It ensured to all citizens an equal right to participate actively in public life and to set up associations of their own choosing, an association being defined as a voluntary, self-governing and durable organization of a non-profit-making character. No one could be forced to join an association, and the right to leave it could not be limited. No one could be punished because of membership or non-membership of an association.

9. Associations were subject to registration by the ordinary courts. Although the law was a new one, it had already led to the establishment of a number of new associations. So far, however, there had been only one case related to the Convention and the decision taken had been a negative one: the Voivodship Court in Opole had refused to register an application for the establishment of a German association on the ground that the applicants were not of German nationality. It was difficult for him to discuss the case at the moment, first, because the Court's decision had been taken only two weeks previously and his information was based mainly on press reports, and secondly, because the sentence was still not legally valid, since the applicants had appealed to the Supreme Court.

10. The Law on Associations did not apply to trade unions or to churches or religious organizations. In May 1989, the Polish Parliament had adopted an act amending the Trade Union Act of 1982, and a new act on trade unions of individual farmers. Those changes developed the principle of trade-union pluralism and brought Poland's trade-union legislation into full conformity with the standards established by ILO Conventions Nos. 11 (Right of Association (Agriculture) Convention, 1921) and 87 (Freedom of Association and Protection of the right to Organise Convention, 1948). The Act of 24 May had some relevance to the general principle of non-discrimination: it provided for the re-employment of persons dismissed for trade-union activities

conducted after 13 December 1981 in contravention of the law then in force. It was thus related to the principle of protection against acts of anti-union discrimination included in ILO Convention No. 98 (Right to Organise and Collective Bargaining Convention, 1949).

11. There had been no changes in the law regarding religious organizations and denominations. During the current year, however, the legal standing of Jehovah's Witnesses had been regulated, bringing the total number of churches and religious denominations officially recognized in Poland to 46. The largest denomination was the Roman Catholic Church, to which about 90 per cent of the population belonged. There were 34 other Christian churches, the largest being the Orthodox Church, Protestant churches and the Polish Catholic Church, and 11 non-Christian religious denominations, including the Muslim Religious Union, the Koraite Religious Union, the Religious Union of The Mosaic Creed, 4 Buddhist communities and 2 religious groups of the followers of Hinduism.

12. Mrs. SADIQ ALI, speaking as rapporteur entrusted with the preliminary examination of the ninth periodic report of Poland, congratulated Mr. Towpik on having supplied important additional information. The report on the Polish legal system was forthright and showed that articles 1, 4 and 6 of the Convention had been adequately implemented. She welcomed the fact that the basic legal provisions against discrimination would remain intact. A wind of change had, however, swept Poland and the Polish representative had given some information on new measures that were relevant to the Committee's work. An extraordinary commission was reviewing Poland's Constitution in order to propose changes that would reflect the pluralistic character of Polish society. She hoped that the relevant revised sections of the Constitution would be placed before the Committee in connection with article 2 of the Convention. On 7 April 1989 the Polish Parliament had passed laws to introduce a socialist parliamentary democracy. She would like information on the composition and methods of work of the new Parliament.

13. In the economic sphere, Poland had given equal status to the public, private and co-operative sectors. Fuller information was also required on that subject, since it was said that the Government believed in the free play of market forces. Would the Government grant subsidies on farm products to prevent a rise in their prices?

14. Questions on the previous report of Poland had remained unanswered. No demographic data on ethnic minorities had been furnished. Detailed information had been called for on the current situation of all minorities - other than Byelorussians and Ukrainians - and on the steps taken to preserve their cultural identity; on the language of the gipsies, and on the status of Jews and migrant workers.

15. In connection with the eighth report (CERD/C/118/Add.21), some members of the Committee had asked for information on the proportion of teachers from ethnic minorities and whether special schools existed to train them and to train young people from minorities for other professions. Information had also been requested on the participation of various minorities in the political, social and economic life of the country. In his oral reply the representative of Poland had mentioned 70,000 members of ethnic groups but had not given a breakdown of that figure: no mention had been made of gipsies, Lithuanians, Czechs, Slovaks, Jews and Greeks.

16. The ninth periodic report of Poland stated in paragraph 11 that, since neither racial discrimination nor ethnic discrimination existed in Poland, there was no need for the State to create integrationist organizations and multi-racial and multi-ethnic movements. However, there were 70,000 members of ethnic groups and it was likely that racial discrimination existed among them, although not involving the State. Some information on that situation would therefore be welcome.

17. With regard to article 3 of the Convention, Poland had said that it maintained no diplomatic relations with South Africa, but it had not mentioned whether it contributed to the United Nations Trust Fund.

18. Referring to article 5 (a) of the Convention, she noted that, in October 1986, the Polish Parliament had passed legislation allowing certain crimes against public order (political offences) to be treated as misdemeanours subject to a penalty equivalent to approximately $US 100. The legislation gave the authorities the option of treating certain crimes as felonies or as misdemeanours depending on the perceived seriousness of the offence. In the latter case the accused often did not have the benefit of a defence counsel. She asked whether that law was still valid and how many people had been penalized under it.

19. With respect to article 5 (d) (ix) of the Convention, under Polish law associations and clubs needed official permission or sponsorship to function legally. According to the statement by the representative of Poland, any association could now be formed without the need for permission under Polish law. Among the independent clubs was the Catholic Intellectuals Club (KKK), which had been engaged in persuading the Government to adopt new legislation that would drop the "social utility" criterion routinely used to prevent the organization of new clubs or associations. She asked whether the new Polish régime would eliminate that requirement.

20. Concerning article 5 (e) (v) of the Convention, amendments adopted in 1985 to the 1982 Higher Education Act had increased government control over universities and other college-level institutions. One of the most important amendments empowered the Minister of Science and Higher Technical Education to approve all candidates for university rectorships and other high offices before the names of the candidates could be submitted to the University Senate for election. She asked whether there was now any possibility of that provision being repealed.

21. With regard to article 5 (e) (iii) of the Convention, it was stated in paragraph 62 of the report that economic, social and cultural rights, and particularly the right to housing, were guaranteed by provisions of the Constitution. She asked how far that was possible when Poland was facing an acute housing shortage. Further information on housing was needed.

22. Regarding article 5 (d) (ix) of the Convention, it was reported that minority religions - Eastern Orthodox, Ukrainian Catholic and the much smaller Protestant, Jewish and Muslim congregations - found it difficult to maintain their places of worship and train their clergy, mainly because of their small size, wide dispersion and limited financial resources. The largest minority was the Orthodox faith, with between 800,000 and 1.5 million members concentrated in Poland's eastern provinces. Could not the Government grant them a subsidy and help them to worship in accordance with their faith?

23. Apart from the financial difficulties, there had been complaints of Polish ethnic prejudice, since most of the Orthodox faithful in Poland were of Byelorussian, Ukrainian or Russian origin. Those complaints had not come to light in the reports submitted by Poland. Orthodox believers faced a major problem in maintaining contact with their religious bretheren in the Soviet Union, because, it was reliably reported, of restrictions on their movements across the border by the Governments of both Poland and the Soviet Union. In view of the existence of glasnost and perestroika in both countries, she asked whether those restrictions could now be relaxed.

24. Finally, the representative of Poland had given some details of the office of Spokesman for Civic Rights. She hoped that in future some information would be provided on cases dealt with by the Spokesman.

25. Mr. PARTSCH welcomed the reference by the representative of Poland to the petition handed to the Polish authorities in the district of Opole by 120,000 people who claimed to be of German origin, not German nationality. During the discussion of Poland's previous report in 1985, the Committee had been told that there was no minority of German origin, because all people of German origin had left immediately after the conclusion of the Final Act of the Conference on Security and Co-operation in Europe 3/. According to the figures he had before him, however, no fewer than 215,000 people claiming to be of German origin had left Poland for the Federal Republic of Germany since 1985. The numbers leaving had recently increased: in the first six months of 1989, 97,539 people had come to the Federal Republic. One reason for the recent increase was that the Polish authorities were adopting a much more liberal policy than previously. He could not therefore understand why the representative of Poland had earlier said that people of German origin had been ousted from Poland, leaving no German minority. More than 50 per cent of the people now claiming to be of German origin had been born after 1945 and should not be discriminated against because the State of origin to which they claimed to belong had committed certain acts during the Second World War. Comparing the small numbers of other minorities with the numbers of people of German origin, of whom nearly 1 million had left Poland since 1950, when the great emigration of 1945 and 1946 was already past, he did not see how it could be said that those people did not constitute an ethnic minority.

26. He had been very impressed Mr. Gorbachev's announcement to the General Assembly on 7 December 1988 that the Soviet Union would withdraw its reservation concerning article 22 of the Convention, which provided for access to the International Court of Justice in the event of a dispute between States parties on the interpretation of the Convention. The Soviet Foreign Minister had formally withdrawn the reservation in February 1989, and Mr. Gorbachev had urged all States to do the same. He therefore asked whether Poland was considering such action.

27. Mr. BANTON said there could be few countries, if any, that did not have shameful pages in their history. True patriotism might be said to exist only when people accepted that they were identified with the ignoble as well as the noble events in their nation's past. Many States reporting to the Committee needed to acknowledge that their Governments had mistreated racial minorities; yet some refused to do so. To speak of errors and mistakes was not enough: reconciliation demanded acknowledgement of moral failures.

28. Polish people could understand that fact because their history was replete with tragedies, mostly involving suffering by Polish people at the hands of others. But one tragedy was the suffering which, in the 1940s, Polish people had inflicted on Jews. He had therefore been heartened by a report in February 1988 that the Government was shortly to publish an apology for anti-Semitic persecutions conducted in the name of anti-Zionism during 1967 and 1968. That had reminded him that, in Christian theology, the first of the deadly sins was the sin of pride. Governments were specially liable to that sin: it was most unusual for them to apologize for their own wrongdoings towards their citizens. If the Government had indeed made such a declaration, it should be warmly commended for its courage.

29. The CHAIRMAN invited the representative of Poland to reply to points raised by the Committee during its discussion.

30. Mr. TOWPIK (Poland), replying to Mrs. Sadiq Ali's question whether Poland intended to introduce a market economy, said that that was indeed the Government's intention, for two main reasons: first, the economic system which had so far existed, although it had played an important role in previous stages of the country's development, at present appeared to be inefficient; and secondly, the previous system implied important subsidies for different branches of the economy, which were not possible during the present acute economic crisis. The Government was aware that the transition to a market economy was a painful process for low-income groups, and all possible measures were being considered for the protection of such groups, especially the old, the disabled and families with many children. One measure being considered was the indexation of wages and salaries; the relevant law had been passed in Parliament a few weeks previously.

31. The law on economic activities, enacted by Parliament in December 1988, had introduced freedom of economic activities regardless of ownership and had given the private sector equal status with the public sector. Private businessmen and manufacturers would therefore no longer have to register or obtain licences for their activities. Restrictions on the numbers of people employed had also been abolished. Subsidies for some food items were still maintained, but had been abolished for others by a decision taken 10 days before.

32. One of the most difficult problems in the present economic and social life of Poland was housing. Article 49 of the Polish Constitution stated that the Polish People's Republic should strive to improve housing conditions and, in co-operation with citizens, should promote and develop various forms of housing construction, especially those organized by co-operative societies. Between 1975 and 1979, an average of 270,000 flats had been completed each year. During the 1980s the number had been much smaller: about 200,000 flats a year. Taking that difficult situation into account, the Polish Parliament in 1984 had adopted a special resolution on housing policy up to 1990. Every effort was being made by the Government to implement that resolution. The present Government recognized housing, agriculture and environmental protection as its three priority issues, but the problem remained far from solution. One positive development was that although the number of flats built had decreased, their quality had greatly improved. It was also necessary to take demographic factors into account. In that connection, he said that Poland's population had increased from some 23 million in 1945 to about 38 million at the present time.

33. With regard to the political system, he said that amendments to the Constitution were designed to change the structure of the supreme authority in Poland. The legislative power was represented by two chambers. Provision had been made for the introduction of the office of President, and the autonomy of the judiciary had been increased. Work on the new Constitution was scheduled to be completed in 1991.

34. Referring to the law on universities, he said that according to the Act on Higher Education of 1982, the University Senate designated two to four candidates for the post of university rector for consideration by the Minister of Education. The Minister had the right to object to any of the candidates. The possibility of repealing the law had been widely discussed and it seemed that a new law might be adopted.

35. The difference between felonies and misdemeanours lay mainly in the penalties imposed. The penalty imposed for a misdemeanour could be imprisonment for up to three months and a fixed level of fines. The penalties for felonies usually involved higher fines and longer periods of imprisonment.

36. With regard to religious organizations and ethnic minorities, the Roman Catholics constituted the largest religious group in Poland. The largest minority was the Orthodox faith, numbering about 850,000 believers. Lutherans constituted the next minority with 90,000 believers and Jehovah's Witnesses numbered 50,000. It should be noted that there were also some non-Christians, including Muslims.

37. Owing to the separation between Church and State, the Government provided no subsidies to churches. However, the State did provide funds for the renovation and maintenance of churches which had historic value. There were no limitations on contacts between the Orthodox in Poland and their religious brethren in the Soviet Union and, judging from press reports, similar contacts were envisaged between Polish Roman Catholics and Orthodox believers in the Soviet Union. The Government's general policy was in favour of contacts between Roman Catholics and non-Roman Catholics.

38. As far as national groups were concerned, Polish citizens of non-Polish origin constituted 1.5 per cent of the entire population. Ukrainians constituted the largest group, numbering 200,000. They had their own organizations and publications. The Russians were the second largest ethnic group and had formed several organizations, including a socio-cultural association. Czechoslovaks and Slovaks numbered about 30,000. They had their own socio-cultural organizations and publications. There were about 7,500 Lithuanians, who had also organized a cultural society. Jews constituted about 15,000 persons and had a Jewish organization. There was a Jewish national theatre, which performed plays in the Yiddish language. It should also be noted that the Greeks had a society of about 5,000 members. There were artistic gipsy groups which promoted gipsy culture. Apart from periodical publications in minority languages, many Polish radio stations broadcast programmes in the languages of minority groups.

39. With regard to schools, children could learn their native language in so-called inter-school centres. However, there were also schools where lessons were given in the language of minority children, with the exception of some subjects such as the Polish language or Polish history. There were no special schools to train minority teachers.

40. The question of German minority groups was rather complicated. Following the Second World War, the borders of Poland had been shifted westwards. From 1945 to 1947, a number of Germans living in the territory occupied by Poland had been resettled in the Allied-occupied sectors of the Federal Republic of Germany. That had been done by the decision and under the supervision of the Allies. Prior to the establishment of relations between Poland and the Federal Republic of Germany, about 450,000 persons had left Poland. Subsequently, under family reunification agreements, about 300,000 Polish citizens had left the country.

41. Towards the end of 1970, there had been a common understanding in Poland and the Federal Republic of Germany that no more Germans or people with close relatives in the Federal Republic were left in Poland, in other words, that the painful process of family reunification had come to an end. However, in 1983, the question of 1 million Germans in Poland had once again been raised. The main reason for that development seemed to be that the Federal Republic of Germany maintained a citizenship law dating from the Second Reich, under which German citizens or persons recognized as Germans were those who had lived in the territory of the Second and Third Reich. The children of such persons were also treated as Germans by the Federal Republic. It should be noted that people in Poland who wished to emigrate to the Federal Republic for economic reasons had to declare that they were of German origin in order to obtain visas or resident permits. It would be seen that the question was a complicated one, comprising many legal and economic factors. It was incorrect to say that Germans had been ousted from Poland. Their departure had been the result of a post-war decision by the Allied Powers, and agreements had then been reached between the Federal Republic and Poland.

42. It should be noted that there was a growing interest in Poland in German culture and that a cultural centre at Warsaw operated by the German Democratic Republic was quite popular.

43. In response to a question by Mrs. Sadiq Ali, he said that the legislation giving the authorities the option of handling certain crimes as felonies or as misdemeanours depending on the perceived seriousness of the offence was still valid. However, if the accused person did not agree with the sentence, he could appeal to an ordinary court and the normal procedure would then be followed.

44. Mr. GARVALOV expressed appreciation for the additional information provided by Poland in its ninth periodic report. States parties found themselves at different stages with regard to the implementation of the Convention. The report by Poland was quite impressive in that it indicated amendments to the Criminal Code and provided detailed information under article 5.

45. Mr. PARTSCH agreed that direct negotiations were required to resolve the problem of Poland's ethnic German minority. However, negotiations could only be successful if all sides acknowledged the reality of the situation; to deny the existence of that minority merely served to complicate the issue.

46. Mr. SHAHI requested information on the extent of religious freedom in Poland. He asked whether all religious groups were treated in the same way and if people were required to comply with the law of the State in matters such as marriage and divorce or were permitted to follow their religious beliefs. He sought details of the Government's attitude to freedom of collective worship and religious schools.

47. Mr. BANTON asked whether Mr. Shahi's questions were directly related to the Convention.

48. Mr. SHAHI referred to article 5 (d) (vii) of the Convention, which included the "right to freedom of thought, conscience and religion".

49. Mr. RESHETOV said that all members of the Committee asked questions which they felt to be related to the subject under discussion and they should respect one another's viewpoints.

50. With reference to the problem of ethnic Germans in Poland, while he sympathized with Mr. Partsch's feelings, he considered his attitude to be unjustified by international law. Any demand to give special rights to an ethnic group was a source of grave concern. The attempt to extend German citzenship to people who had renounced their claims to that citizenship many years before was politically motivated and he could not support it. He stressed the importance of a rational approach and respect for the standards of international law.

51. The CHAIRMAN said that issues arising out of the Second World War should be dealt with in other bodies.

52. Mr. ABOUL-NASR said that he fully endorsed Mr. Banton's comment. Unless religious problems were related to racial discrimination, they should not be dealt with by the Committee. He called for tolerance when discussing religious and economic issues and for the Committee to treat all States in the same way.

53. Mr. TOWPIK (Poland) said that the general principle of the separation of church and State was observed in Poland. Ninety per cent of the population were members of the Roman Catholic Church, which gave that Church a strong position in the country. All religious groups were, however, equal in the eyes of the law. There were religious schools and publishing houses in Poland as well as two religious universities, one of which was not Roman Catholic. The State laws governing marriage and divorce had to be respected but, within those limits, people were free to follow their religious traditions.

54. The CHAIRMAN thanked the representative of Poland for the answers he had given and looked forward to receiving additional information in Poland's subsequent periodic report. The Committee had thus concluded its consideration of the ninth periodic report of Poland.

Mr. Towpik (Poland) withdrew.

Eighth and ninth periodic reports of Norway (CERD/C/132/Add.5 and CERD/C/159/Add.4)

At the invitation of the Chairman, Mr. Møse, Mr. Thorud and Mr. Wille (Norway) took places at the Committee table.

55. *Mr. MØSE* (Norway), introducing the eighth (CERD/C/132/Add.5) and ninth (CERD/C/159/Add.4) periodic reports of Norway, emphasized the importance attached by his country to the reporting system which enabled it to maintain an awareness of its legislative and administrative obligations.

56. The proposed constitutional provision concerning the legal status of the Sami people had been adopted by Parliament on 21 April 1988 and its text was given in paragraph 12 of the eighth report. The bill concerning the establishment of a new central Sami organ (Sametinget) and some other Sami policy issues, referred to in paragraphs 13 to 15 of the eighth report, had been adopted by Parliament on 12 June 1987 and the first elections to the Sametinget were to be held in September 1989.

57. The new Aliens Act, which was expected to enter into force early in 1990, would provide legal safeguards for the individual and protect refugees from persecution.

58. Since the submission of the eighth periodic report, Norway and the other Nordic countries had adopted a number of unilateral measures against South Africa. In March 1988, the Nordic Foreign Ministers had adopted a revised Nordic Programme of Action against *Apartheid*, which was contained in annex I to the ninth report. The most significant recent national measure in that field was the Act relating to an economic boycott of South Africa and Namibia which had entered into force on 20 March 1987 and which was set out in annex II to the ninth report. The Act of 17 June 1986 banning the sale of Norwegian petroleum to South Africa remained in force.

59. *Mrs. SADIQ ALI*, speaking as rapporteur entrusted with the preliminary examination of the eighth (CERD/C/132/Add.5) and ninth (CERD/C/159/Add.14) periodic reports of Norway, said that Norway was a leading advocate of human rights with a strong egalitarian tradition. She expressed the hope that the recent electoral success of the anti-immigrant Populist Party would not change that situation.

60. She asked whether there were any cases in Norway of racial discrimination against European or American immigrants with regard to employment or housing or whether such discrimination was practised only against such immigrant minority groups as Pakistanis, Vietnamese, Turks and Africans.

61. Referring to paragraph 6 of the ninth period report (paras.16-22), she asked for clarification of the phrase "unless applicable rules of law otherwise require" in the new special provision on discrimination in the Aliens Act.

62. Referring to the section on aliens in the eighth report (paras. 16-22), she asked whether the terms of reference and composition of the Liaison Committee had been changed to meet the discontent among immigrants regarding their form of representation and whether the Committee had become a decision-making body in which representatives were able to take final

decisions on issues within their own field of competence. She also requested information on the role of the Immigrant Council. She welcomed the appointment of a new advisory group for improved co-ordination of the work of the State and the municipalities regarding the situation of gipsies and asked whether any gipsies were members of the group.

63. Paragraph 24 of the ninth periodic report stated that the Press Council had not considered any new cases concerning alleged racial discrimination in newspapers since the eighth periodic report but she asked whether all newspapers had been examined. She commended the statement in paragraph 25 of the report that the Anti-Racist Centre now received annual funding from the national budget.

64. She welcomed the institution of the Sami Parliament and the adoption of educational measures for the Sami population. She hoped that the Sametinget would be given powers to allocate financial resources for measures to promote Sami culture and that the Sami people would be granted rights to natural resources.

65. She asked what action had been taken by the Norwegian Government to improve the situation of the southern Sami who had lost many reindeer as a result of fall-out from the Chernobyl nuclear accident, which had seriously affected their economy and ethnic identity.

66. She asked whether the extremely small Finnish population in the north-eastern corner of Norway had been integrated into the mainstream of national life.

67. She praised Norway and the other Nordic countries for the action they had taken to combat the apartheid régime and commended the adoption of a bill banning the sale of petroleum to South Africa. She asked for information on the penalties for those who flouted that ban, as it had been estimated that Norwegian tankers were supplying between a third and a half of Pretoria's oil needs.

68. She inquired whether there was any possibility of government subsidies to the press being withdrawn in cases where it had defended racial discrimination. Annex II of the eighth periodic report referred to extremely derogatory remarks made against immigrants in certain leaflets which indicated that there was insufficient awareness in Norway of the principles of the United Nations Declaration and the International Convention on the Elimination of All Forms of Racial Discrimination. The Government should publicize those documents more widely.

69. Mr. BANTON said that article 6 of the Convention referred to "effective protection and remedies" and he asked what remedies were available in Norway if the right to housing or employment was refused on racial grounds.

70. Mr. ABOUL-NASR commended Norway's record on human rights and the assistance it had given to national liberation movements and victims of racial discrimination throughout the world. However, he felt that the Programme of Action against Apartheid (CERD/C/159/Add.14, annex I) which had been adopted by the Nordic countries amounted to a declaration of intent rather than genuine sanctions. He asked whether that reflected some hesitancy among the Nordic countries about taking decisive steps to combat apartheid and to what extent the programme had been effective.

71. Mr. SONG Shuhua referred to paragraph 13 of the eighth periodic report, (CERD/C/132/Add.5), which stated that the Sami parliament could deal with all questions it considered to be "of particular importance to the Sami population". He asked whether that amounted to real participation in the political life of the country. Paragraph 9 of the report referred to bringing the Sami population "up to the same level as that of other Norwegian nationals" and he inquired what the real difference in status was between the Sami people and other Norwegians. He requested information on the general educational level of the Sami people and asked whether they were able to attend university and if higher education in the Sami language was available. He asked how the problem of incorporating new terms into the Sami language was being resolved.

72. Referring to paragraph 30 of the eighth report, he asked whether the Government was planning to modify its policy in view of the changing situation in Namibia.

73. He asked for details of the present employment situation among the Urdu, Turkish and Vietnamese women referred to in paragraph 72 of the report.

74. Mr. GARVALOV, referring to paragraph 9 of the eighth periodic report (CERD/C/132/Add.5), acknowledged that the Convention did not grant anyone new human rights but said that the issue was whether those rights were accessible to the Sami people. He asked why it was believed that special measures and preferential treatment for the Sami people would create problems. He also asked whether Norway maintained diplomatic contacts with South Africa and said that he regarded the description of the application of article 4 of the Convention in Norway, given in paragraph 37 of the report, as cursory.

75. Mr. RESHETOV commended the high quality of the two reports and expressed full support for Mrs. Sadiq Ali's statement that Norway, like the other Nordic countries, had a long-standing tradition of defending human rights. The eighth report contained a very healthy interpretation of the standards of international law as applied to the rights of national minorities, especially in paragraphs 8 and 9. In their analysis of their obligations under the Convention, the Norwegian authorities correctly assumed responsibility for developing the language, culture and societal life of the Sami population, as could be seen in paragraph 12. The information regarding the Sami population was of great interest to the Soviet Union, which had a similar minority, and would be conveyed to the newly created forum for the development of small and indigenous groups, an informal, independent body that included deputies of the Supreme Soviet.

76. The information given in annex II of the eighth report, with specific examples of acts regarded as racially discriminatory and consequently punishable under criminal law, was like the information provided in the eighth report of France (CERD/C/148/Add.3), most useful in enlightening the Committee on practical action taken to combat racial discrimination.

77. Mr. BRAUNSCHWEIG said that he, too, had been most interested in the judgements described in annex II to the eighth report (CERD/C/132/Add.5). He wished to know whether those concerned could appeal against such decisions and whether they had in fact done so.

78. From a reading of the ninth report (CERD/C/159/Add.4), it appeared that no cases had come before the courts concerning the application of the provisions of the Penal Code in a matter of racial discrimination. He drew attention, however, to a Supreme Court decision of 1981 referred to in previous reports, and sought confirmation that no case of racial discrimination had been brought before the Supreme Court since that date.

79. Mr. WILLE (Norway), replying to the questions raised by the Committee, said that Norway had no diplomatic relations with South Africa. It did have a Consulate General in Cape Town staffed by two career diplomats, but their presence in no way implied support for the *apartheid* system. Their function was to gather information from all sources, including opposition groups with which Norway maintained close contacts and to which it provided support, and to provide consular assistance to the small number of Norwegian nationals in South Africa. Referring to the question about penalties for tankers freighting crude oil to South Africa, there was no evidence that Norwegian ships had violated the Boycott Act of 1987 since its entry into force. The Act contained a provision, however, making any violations punishable by fines or imprisonment for up to three years, or both. In response to Mr. Song Shuhua's question about a possible amendment to the trade embargo bill in the light of developments in Namibia, he said that there were no concrete proposals to date, but once the independence process was under way in Namibia, the law would certainly be amended accordingly.

80. He could give no precise figures on the measures taken to protect the reindeer of the Sami people after the Chernobyl nuclear accident, but the Sami population had been given advice and had benefited from an extensive programme for the control of reindeer meat, and had also been given compensation for any ecological damage suffered.

81. Mr. MØSE (Norway), replying to the question about possible discrimination against European or American as distinct from Asian or African immigrants, said that the obvious point of departure was that any kind of racial discrimination was prohibited and punishable under section 135a of the Penal Code. Although the question was difficult to answer, it would be fair to say that, in practice, to the extent that such incidents did occur, discriminatory utterances would be more likely to be directed towards people whose appearance differed from that of the local population, although it could not be said for sure that a distinction was drawn specifically between Europeans and Americans on the one hand, and persons from other parts of the world on the other.

82. All court judgements concerning cases of racial discrimination in application of section 135 of the Penal Code had been submitted to the Committee. The Oslo City judgements contained in annex II to the eighth report were simply the most recent ones. Leading cases judged by the Supreme Court provided guidance for the lower courts, which might, incidentally, be why no appeals had been brought against their judgements, although appeals could of course have been made.

83. Some comments had been made by Committee members on the description of the views expressed by the Sami Rights Committee. Those views had been submitted in order to apprise the Committee of the vital part played by the Convention in establishing the legal situation of the Sami people in the Sami Rights Committee's first report. That Committee's interpretation of the

Convention had related specifically to the issues raised by its own terms of reference. Having taken into account various international conventions, that Committee had sought to determine whether any further rights were conferred by the International Convention on the Elimination of All Forms of Racial Discrimination, which explained the somewhat laconic statement in paragraph 9 of the eighth report that the Convention did not grant the Sami people any new human rights.

84. Cases in which the press had overstepped the boundaries laid down by the Press Council in respect of racist material were very few and far between, and, as far as he was aware, there had been no instances of withdrawal of subsidies, although in principle the publication of illegal utterances might well have a bearing on the granting of subsidies. Information on the Press Council had been given in previous reports; there was no systematic control by the Council, but in general it took action on the basis of complaints against the publication of discriminatory material.

85. Norway's implementation of article 4 of the Convention was governed, in particular, by sections 135a and 349a of the Penal Code which had been enacted prior to the entry into force of the Convention. Previous reports had dealt with the scope of those two provisions, whose texts had been submitted to the Committee, and with the ways in which article 4 was being implemented, which explained the brief statement in paragraph 37 of the eighth report.

86. On the question of the educational level of the Sami people, there were of course Samis with a university education who played a leading role in intellectual circles, but there was a perceived problem of motivation among young Samis to pursue their studies which called for a solution by the authorities.

87. Mr. WILLE (Norway) specified further that the Sami language was taught in schools in areas populated by the Sami people and that the Government was currently working on a draft Sami language bill to increase the use of the Sami language, including its extended use in the administration and the courts. The language was already used widely in the courts in Sami areas through interpreters. However, he was unable to quote any precise figures on the educational or economic level of the Sami population.

88. Mr. MØSE (Norway), turning to the application of article 6, especially in regard to the right to housing and employment, said that a distinction should be drawn between the public and private sectors. In the case of both housing and employment, the unwritten principle of equality and non-discrimination applied, and any victim of a discriminatory decision could go to court if such a decision was based on illegal grounds. In the private sphere, legal provisions in various fields would provide the necessary guarantees. Where employment was concerned, they would include binding rules in such matters as the working environment, leave or unfair dismissal, including section 410 of the Penal Code providing for penalties in the event of illegal dismissal or refusal to accept a person into employment. Again, in the case of housing, it would be necessary to turn to specific legal provisions, such as the Rent Act, for protection against unjustified eviction. In the case of the sale of property, however, those guarantees might be partly offset by the principle of contractual freedom, which existed in Norway as elsewhere.

89. Mr. THORUD (Norway) said, in reply to Mrs. Sadiq Ali's question about the Liaison Committee referred to in paragraph 21 of the eighth report, that its mandate had been extended until 1990, followed by a further period until 1992, at which point it would become an Immigrant Council. It currently consisted of representatives of immigrants, the central Government and political parties represented in Parliament, and had an advisory role on questions of principle in Norwegian immigration policy as well as providing a forum for dialogue between immigrants and policy-makers. Its terms of reference and composition had been subject to much debate and a solution had been found, with the support of immigrants themselves, with its conversion into an Immigrant Council consisting only of representatives of immigrants advising the Government on immigrant issues.

90. On the subject of Finnish minorities, there were in fact at least two distinct minorities, one of which, the "older" minority, had its roots in Finnish migration to Norway between the sixteenth and nineteenth centuries. Growing awareness of their own identity in recent years had led to a resurgence of the desire to preserve their tradition and roots, and the members of that group would be receiving government subsidies for that purpose. There was also a second Finnish minority representing recent Finnish migration which also had its own organizations that had been subsidized in the previous decade.

91. Regarding the employment of women immigrants, the level of employment of Asian women was generally lower than that of Norwegian women, but there were also marked differences, for cultural and other reasons, between the various Asian groups themselves, the level being higher among Turkish and Moroccan women than among Pakistani women, for instance. As was true of female employment in general, there was some mismatch between their qualifications and labour market vacancies, although the Government was currently considering measures to remedy the situation.

92. Responding to Mr. Reshetov's comment about the Sami minority in the Soviet Union, he was able to inform him that the recent annual meeting of members of the Sami communities of the Nordic countries had been attended for the first time by Sami representatives from the Soviet Union.

93. The specific provision on discrimination added to the new Aliens Act and referred to in paragraph 6 of the ninth report had been enacted to make it quite clear that all discrimination was prohibited, even though the provision was already part of the unwritten law against discrimination. The other "applicable rules of law" referred to in that paragraph were mainly rules concerned with such matters as the acquisition of real estate or the forming of enterprises.

94. The CHAIRMAN thanked the representatives of Norway on behalf of the Committee for their co-operation and for the detailed information provided. The Committee had thus concluded its consideration of the eighth (CERD/C/132/Add.5) and ninth (CERD/C/159/Add.4) reports of Norway.

Mr. Møse, Mr. Thorud and Mr. Wille withdrew.

The meeting rose at 1.20 p.m.

837th meeting

Friday, 11 August 1989
at 10.15 a.m.

Chairman: Mr. LAMPTEY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (*continued*)

Eighth, ninth and tenth periodic reports of Egypt (CERD/C/149/Add.22 and CERD/C/172/Add.12)

At the invitation of the Chairman, Mr. Elaraby (Egypt) took a place at the Committee table.

1. *Mr. ELARABY* (Egypt), after explaining that the eighth and ninth periodic reports had been combined in a single document (CERD/C/149/Add.22), as requested by the Committee at its thirty-second session, 4/ said that Egypt was committed to the Committee's lofty objectives and had a long history of combating and eliminating all forms of racial discrimination.

2. The first, general part of the consolidated report described Egypt's policy to combat racial discrimination. Article 40 of the Egyptian Constitution embodied the principle that all citizens were equal before the law in regard to their rights and obligations, without any discrimination on grounds of sex, origin, language, religion or belief. The Constitution also contained provisions concerning equal rights of all citizens in such areas as the assumption of public office, education, the protection of private property, the inviolability of private life, and permanent and temporary immigration.

3. The Convention had become an integral part of Egyptian law from the date of its ratification, which meant that any of its articles could be invoked in Egyptian courts. Egypt's legal and social systems were based on the principle of national unity, equality among citizens and the total prohibition of any kind of classification on the basis of race or religion or any discrimination between citizens on grounds of sex, origin or belief. Egypt had already promulgated legislative and administrative measures to give effect to most of the provisions of the Convention. He could assure the Committee that any gaps that appeared to remain were due to the lengthy procedure for the amendment of laws, especially the Penal Code. In the previous 100 years, the Penal Code had been amended twice and was in the process of being amended for the third time. The Egyptian Constitution acknowledged the right of equal treatment before the courts. Chapter 6 of the second volume of the Penal Code was entirely devoted to offences involving coercion and ill-treatment of individuals by government officials. Social, political, civil, economic and cultural rights were guaranteed, as could be seen from Egypt's periodic reports, and Egypt was a party to all legal instruments dealing with such rights.

4. The implementation of article 7 of the Convention was dealt with fully in the consolidated report, which clearly showed the importance attached by Egypt to education and the dissemination of information as well as to the mobilization of public opinion for the elimination of racial discrimination.

5. Egypt had consistently supported all international efforts aimed at the elimination of policies of racial discrimination. Special mention should be

made of a series of recent efforts by Egypt to combat racial discrimination in relation to the practices of the South African régime in Namibia. Egypt had been an active member of the United Nations Council for Namibia since its inception, and in 1988 had hosted a conference as part of a series of meetings held for the purpose of granting independence to Namibia. In conclusion, he drew the Committee's attention to the third part of the consolidated report and hoped that the replies given to questions raised by Committee members during the discussion of the seventh periodic report (CERD/C/91/Add.15) met with their approval.

6. Mr. YUTZIS, speaking as rapporteur entrusted with the preliminary examination of the reports of Egypt, said that the thought-provoking reports demonstrated Egypt's willingness to respond to the Committee's requests. The importance attached by the Government of Egypt to human rights was clear from the preamble and article 57 of the Constitution and from a reading of previous reports.

7. An initial point concerned the definition of the word "community", which raised problems of interpretation. The Egyptian representative had said, in introducing his country's fifth report (CERD/C/20/Add.11 and Add.24), that the term "community" should be understood to mean religious communities and that there were no racial or ethnic communities in Egypt. In French and Spanish, the equivalent term had a broader meaning. In the consolidated report, it could be seen that particular importance was given to religious problems and the problems of religious communities.

8. The representative of Egypt had stated, as did paragraph 5 of the consolidated report, that the Egyptian legal system was based on the concept of national unity; it was further stated, in paragraph 24, that no cases concerning damages resulting from racial discrimination as defined in article 1 of the Convention had been heard or adjudged by the courts. Was it in fact possible to state, as had consistently been done, that there was no racial discrimination in Egypt? That was no doubt based on an interpretation of article 1 to mean a systematic application of racial discrimination, as was the case in South Africa. However, it did not necessarily mean that there were no hidden vestiges of racial discrimination in a given society. Were there no ethnic or linguistic differences, and had all traces of colonialism been totally eradicated? Colonial policy to divide and fragment society had often had racial implications. He understood that there were a number of minorities, such as those of the oasis of west Bere-Bere and Armenian and Greek minorities, and he drew attention to the absence of demographic data that would help to clarify the minority situation. The Egyptian representative had promised to provide such data when the sixth periodic report (CERD/C/66/Add.4) had been discussed. No information had been provided, either, about migrant workers, although it was known that at one time Egypt had had labour contracts with neighbouring countries.

9. Regarding the implementation of article 3, Egypt's position was very clear, and its policy in regard to the South African régime was a cause for satisfaction.

10. Article 4 left no doubt regarding the need for positive measures to eliminate racial discrimination. The Government of Egypt insisted that incitement to racial discrimination did not exist, because it was against the Constitution. It was important, however, to have a code of procedure. He

wished to know what laws could be invoked and what sanctions other than dissolution existed against private organizations practising racial discrimination. Although the representative of Egypt had informed the Committee that an amendment of the Penal Code was under way, and he himself understood the complexity of that process, it should be clear that until that issue was resolved, article 4 could not be considered to be fully implemented.

11. Reporting on its implementation of that article, the Egyptian Government placed emphasis on religious issues, although religious freedom was in fact the subject of article 5. Paragraph 12 (a) of the consolidated report was somewhat too general in scope, while subparagraphs (b) to (e) dealt with religious discrimination and the sanctions provided for by articles 98, 160, 161 and 176 of the Penal Code. They provided interesting evidence of the importance attached by the Government of Egypt to punishing attacks on religious symbols - rather than attacks on individuals - and did not refer to direct action against persons responsible for such attacks. It seemed paradoxical that equally severe penalties should not be provided for in cases of racial discrimination.

12. Paragraph 13 concerning Act No. 40 of 1977, as amended by Act No. 36 of 1979, did not explain how that Act concerning political parties applied to racist organizations, and the information given in paragraph 31 (c) did not seem entirely adequate. The final sentence in paragraph 33, stating that the Legislature's purpose in prohibiting the exploitation of religion for the establishment of political parties was to prevent the nation from being split into racial parties required further explanation. Did it imply recognition of the possibility that racist divisions and associated problems actually existed?

13. A number of questions might be raised concerning the implementation of article 5 (d) (vii) and (viii) concerning freedom of religion. With reference to paragraph 31 of the consolidated report, Egypt recognized private social associations and institutions, provided they met certain requirements. They included public charities, and he wished to know who defined what a charity was or indeed whether all private institutions came under State control. Paragraph 33 raised a question of substance, namely, who defined the limits within which religion functioned in Egypt and to what extent did the Government place restrictions on religious freedom? The interaction between political and religious activity was a complex one and he would like information on the ethical implications of Egypt's position regarding the influence of religion on government policies. He strongly believed that the implementation of the Convention in matters of religious freedom was very important, since it was an area dealt with by few other human rights conventions. Moreover, religious groups might be synonymous with ethnic groups.

14. In connection with article 6, he again wished to know what laws could be invoked against racially discriminatory practices. Finally, referring to article 7, he said that it was important to provide a detailed, clear description of measures adopted by Egypt in the fields of education, culture and information with a view to combating racism and racial discrimination.

15. Mr. SONG Shuhua said that nowhere in the consolidated report (CERD/C/149/Add.22) was there any mention of a population problem in Egypt. He would like some information on that point.

16. With reference to paragraph 12 of the report, the article of the Penal Code referred to in subparagraph (a) might cover acts of racial discrimination as well as other acts; subparagraphs (b)-(e) all referred to crimes against religious activities not related directly to racial discrimination. He asked whether the Government intended to introduce more precise legislation to prevent racial discrimination.

17. With regard to the first part of paragraph 19 of the report, he said if all citizens enjoyed freedom of movement within the country, many would inevitably move to Cairo. One Latin American capital had a population of over 20 million; he asked whether Egypt faced a similar problem of over-concentration in large cities and, if so, how it was being tackled.

18. Finally, he welcomed the incorporation in the third part of the report of replies to questions raised by the Committee during the discussion of the seventh periodic report (CERD/C/91/Add.15).

19. Mr. PARTSCH, referring to paragraph 12 (e) of the consolidated report (CERD/C/149/Add.22), called attention to a divergence between the translations from Arabic into English of article 176 of the Egyptian Penal Code. The translation in the third periodic report of Egypt (CERD/C/R.70/Add.15) used the phrase "group or groups of people" instead of the phrase "religious community", used in paragraph 12 (e). He would like to know which translation was correct.

20. With regard to the section of the report on political rights, the exclusion of labour unions from political activities required clarification. If a question of policy relating to labour relations arose or if a new code of labour legislation was being considered, were labour unions prevented from submitting their proposals? If there was racial conflict in a factory between workers, were unions prohibited from attempting to bring about conciliation, which was a form of political action? A question of definition might be involved; perhaps what was intended was that labour unions should not try to form political parties, and that would be understandable.

21. Mr. BRAUNSCHWEIG, referring to the paragraphs of the consolidated report (CERD/C/149/Add.22) dealing with article 4 of the Convention, said his impression was that the offences described in paragraph 12 involved essentially religious problems. The representative of Egypt could perhaps include in its next report information on a number of decisions taken under the legal provisions cited, so that the Committee could analyse them and reach a conclusion on whether they concerned purely religious problems or whether problems of racial discrimination were also involved. If, after examining the judicial decisions, the Committee decided that they bore exclusively on religious problems, it might suggest that the Egyptian Penal Code should be amended to bring it into closer harmony with the provisions of the Convention.

22. The CHAIRMAN invited the representative of Egypt to reply to the points raised by the Committee during its discussion.

23. Mr. ELARABY (Egypt) said that it was important to bear historical and demographic facts in mind in considering the Egyptian reports. The first of those facts was that Egypt had a homogeneous society. Certain countries had minorities; Egypt was fortunate in not having them; Egypt had once had migrant workers, but owing to the economic situation, many of them had left the

country, and people from surrounding countries did not come to settle in Egypt. There were therefore no clear racial differences with respect to colour or features within the population. It was true that article 1 of the Convention referred to "any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin", but there was another important provision in article 1 of the Charter, which referred to encouraging and promoting respect for human rights without distinction as to race, sex, language or religion. Religion was, therefore, implicitly covered by the Convention. Egyptian laws, even if they specifically referred to religion, were wide enough in scope to cover any form of discrimination. However, he agreed that it was important for the Penal Code, which was in the process of being amended, to include specific references to racial discrimination.

24. The Egyptian legal system was based on national unity. Egypt had no particular minority whose rights might be denied. Its people spoke one language. They did, however, have more than one religion, and that was therefore the only aspect covered by Egyptian law. Demographic data should have been provided in the report, but were difficult to obtain. However, the necessary information would be requested.

25. With regard to the oasis mentioned by Mr. Yutzis, there were several oases in Egypt and the people living there were all Arabic-speaking Egyptians; to his knowledge, there was no discrimination against any of them. Mr. Yutzis had referred to Greek and Armenian minorities; if the individuals concerned were Egyptians, there was no discrimination against them in any respect; if they were non-Egyptians, the case was covered by article 1, paragraph 2, of the Convention, according to which the Convention did not apply to distinctions between citizens and non-citizens.

26. It had been suggested that penalties appeared to be directed to attacks on religious symbols, rather than to attacks on individuals. Penalties were applied to persons who insulted or stirred up hatred of a symbol because they were thereby stirring up hatred of a group belonging to a different religion or sect.

27. Attention had been drawn to the words "is to prevent the nation from being split into racial parties" at the end of paragraph 33 of the consolidated report. Difficulties in translation had already been mentioned: the word "racial" was not used in the sense that the Convention used it. The reference was to the need to avoid division of the nation on any basis.

28. Pertinent points had been made on the status of charities. In Egypt, applications for charitable status had to be made to a committee under the Ministry of Social Affairs. The Government took the decision, but could be overruled by the courts.

29. Religious freedom existed; everyone could practise his religion as he wished without interference. As for laws that could be invoked, the Convention itself was part of the law of the land and could be invoked in Egyptian courts. Laws had to conform to the Constitution, which aimed at exactly the same objectives as the Convention.

30. With regard to education, instruction was being given on the Convention itself as part of humanitarian law in law schools, police academies and

various other institutions interested in international and legal matters, as well as in some non-governmental organizations, such as the Egyptian Society of International Law and the United Nations Association, which gave many seminars and published pamphlets on the objectives of the various humanitarian conventions.

31. In reply to Mr. Song Shuhua, he said that there was no restriction on freedom of movement, which would impose unnecessary hardships on the population at large. Instead, an attempt was being made to create jobs in the countryside, decentralize industry and provide throughout the country those facilities which attracted people to capital cities. At present, for instance, there were 14 universities throughout Egypt.

32. In reply to Mr. Partsch, he said that the translation point he had mentioned would be investigated. With regard to labour unions, there was, as Mr. Partsch had suggested, a clear-cut distinction. Labour unions were not supposed to take part in the formation of political parties, but there was no restriction on demands by unions for better pay and conditions.

33. Finally, he agreed with Mr. Braunschweig on the importance of information on the practical application of a penal code. The Government would take note of the need to provide the Committee with some relevant judicial decisions for analysis.

34. Mrs. SADIQ ALI asked whether there were any refugees in Egypt and, if so, what their status was. She also asked for details on Sudanese who entered the country as labourers and domestic servants and on any Israelis living there.

35. Mr. RESHETOV asked whether Egyptian legislation recognized any possibility of the existence of minorities, which the representative of Egypt seemed to deny. The question was one of principle: a situation might arise in a State when it was not clear whether a certain group could be defined as a minority. It might be defined according to the principle of nationality or religion, but those two criteria might coincide. Recognition of the possible existence of a minority was one of the underlying principles of the Convention. If that principle was denied, then so was the possibility of granting rights to a part of the population that might be entitled to separate status on the grounds of the two criteria he had mentioned.

36. Mr. YUTZIS said that he would reserve an in-depth analysis of the question of the non-existence of minorities or ethnic groups until the Committee had received the data requested from the Egyptian Government.

37. However, it did not seem to him that the definition of a political party contained in paragraph 33 of the consolidated report (CERD/C/149/Add.22) was very clear. He did not know any religious group, apart from some which were solely concerned with the next world, that did not refer to governmental affairs, that is, to affairs relating to the sphere of the State. The Islamic religion itself made no sharp distinction between the spiritual and the material. That being the case, the Government was apparently abrogating rights by defining a religious association as a political party if it strove to achieve objectives relating to governmental affairs. The restriction seemed theoretical to say the least, and called for reconsideration. Governmental affairs were of many kinds, and a religious group or community which referred to such affairs did not necessarily aim solely at seizing or holding power.

38. Mr. SHAHI, noting that Egypt was a country which had religious rather than racial minorities, said he thought that it would be useful to put questions concerning the non-discriminatory treatment of those minorities. However, he would not do so in order to adhere strictly to the Committee's terms of reference.

39. He thanked the representative of Egypt and looked forward in the next report of Egypt to the amplification of the provisions of the Penal Code specifically referring to matters of racial discrimination.

40. The CHAIRMAN, speaking in his personal capacity, said that he wished to clarify one point. In his opinion, the statement in paragraph 33 of the consolidated report (CERD/C/149/Add.22) that the "Legislature's purpose in prohibiting the exploitation of religion for the establishment of political parties, even under other designations such as association, group or organization, is to prevent the nation from being split into racial parties" was an unambiguous acknowledgement of the existence of certain racial groups in Egypt. The linkage between religion and race was therefore plain. There were Armenians and Greeks in Egypt, but they were Orthodox Christians and not Muslims. In racial terms, even though they were citizens of Egypt, they were not of Arabic origin.

41. He had felt it necessary to make it clear that there were religious groups and also ethnic minorities in Egypt.

42. Mr. ELARABY (Egypt) said, with regard to the question by Mrs. Sadiq Ali concerning refugees, that Egypt was a party to the 1951 Convention and the Protocol of 1967. At present there were very few refugees in Egypt. Even before his country had ratified the relevant conventions, it had followed a consistent policy of granting asylum to asylum-seekers from many countries, including Italy, Albania, the Soviet Union, Bulgaria and Saudi Arabia. It was proud of its record with regard to refugees.

43. There was complete freedom of movement between the Sudan and Egypt. Formerly, many Sudanese had come to work in Egypt, but recently they had gone to the Gulf States, where there were more economic opportunities.

44. There were Israelis in Egypt and they practised their faith in synagogues.

45. As to whether there were minorities in Egypt, he said that his country was a melting pot of many peoples but that there was understanding and tolerance towards all. Once a person became a citizen, he was protected by law. There was no discrimination based on national origin.

46. As to the question of linguistic groups, all Egyptians spoke Arabic and there was no discrimination on the basis of language.

47. Turning to the subject of political parties, he said that a group could be formed for a specific purpose such as the improvement of schools and health. However, as far as political groups were concerned, the important point was whether they sought to achieve their objective by democratic means or by violence. If they chose violence, the Government would take action.

48. The CHAIRMAN said that when members referred to discrimination, that did not imply that the Government was practising discrimination either through legislation or its actions. The need for race to be reflected in legislation could be seen in the following possible situations: an Egyptian of Armenian origin might decide not to rent an apartment to an Egyptian of Arabic origin because of the latter's habits or Greeks who had become Egyptian in the past five years might be the object of attacks by other members of the population.

49. He thanked the representative of Egypt for his participation in the work of the Committee and said that members looked forward to receiving the next periodic report of Egypt. The Committee had thus concluded its consideration of the eighth, ninth and tenth periodic reports of Egypt.

Mr. Elaraby (Egypt) withdrew.

Seventh and eighth periodic reports of Austria (CERD/C/158/Add.1)

Mr. Berchtold (Austria) took a place at the Committee table.

50. Mr. BERCHTOLD (Austria) said that the document submitted by Austria (CERD/C/158/Add.1) was intended to be comprehensive. His Government wished to continue its dialogue with the Committee and hoped to benefit by the expertise of its members. He would endeavour to provide any clarification requested by members and if he was unable to do so, the matter would be taken up in the next periodic report.

51. Mr. PARTSCH referring to paragraph 69 of the consolidated report (CERD/C/158/Add.1), said that he would like to know what was the relationship between the Ombudsman and the courts.

52. Mr. FERRERO COSTA drew attention to paragraphs 24-28 of the consolidated report and said that he would welcome information concerning Austria's relations with South Africa. While Austria had taken many positive measures, it maintained trade relations with South Africa, as could be seen from paragraph 28. With regard to paragraph 26 (a), he would like to know what was the situation concerning private investment.

53. Mr. GARVALOV drew attention to paragraph 3 of the consolidated report (CERD/C/158/Add.1), which concerned minorities, and to paragraph 9, from which it was clear that 2.5 per cent of the total population of Austria did not speak German. He would like to know what steps had been taken or were envisaged by the Austrian Government to ensure the equality of ethnic minorities with other Austrians. He wondered whether there could be equality of treatment for a person who was unable to speak the language of the country and was seeking a position requiring knowledge of that language.

54. With regard to paragraph 1 (2) of The Constitutional Law on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, quoted in paragraph 5 of the report, he would like to know what were the particular rights or obligations that might be granted to, or imposed on, Austrian nationals.

55. Referring to paragraph 18, he said that, even for statistical purposes, it was difficult to see how Turks could be regarded as Asians, since Turkey was considered to be part of Europe.

56. With regard to article 4 of the Convention, he asked whether the Government of Austria maintained any diplomatic relations with the Government of South Africa.

57. Referring to paragraph 32, he would like to know whether Austrians would be allowed to found a neo-Nazi organization.

58. With respect to paragraph 47, he asked whether Austria recognized dual citizenship and, if so, how that affected the existence of various minorities. Lastly, he would like to know whether the right to work was specifically guaranteed under the Austrian Constitution.

59. Mr. PARTSCH reminded members of the Committee that Austria's implementation of article 4 of the Convention had been described in detail in its sixth periodic report (CERD/C/106/Add.12).

60. Mr. BANTON referred to paragraph 68 of the consolidated report (CERD/C/158/Add.1), which stated that Austria had "a well developed system of legal protection". He requested that the following periodic report of Austria should provide information on the effectiveness of that system and the accessibility of legal remedies to all citizens.

61. Mr. YUTZIS said he would like some information on the residence and employment conditions of migrant workers in Austria and on the level of State support for their relatives. He asked whether education in their native language was available to the children of migrant workers.

62. He asked whether the competence of the Ombudsman extended beyond the public administration to private individuals and whether any penalties were imposed for refusal to provide the Ombudsman with information. He would also like to know whether the Government had organized any seminars or conferences to make young people more aware of the need to respect human rights and combat racial discrimination.

63. Mr. BERCHTOLD (Austria), replying to questions raised, said that the number of migrant workers in Austria had fallen from 185,179 in 1975 to 147,382 in 1987. The majority of migrant workers were Yugoslavs, with Turks constituting the second largest group. All foreigners seeking employment in Austria required a work permit and employers wishing to employ foreign workers were required to provide them with suitable housing. Foreigners permanently employed in Austria were treated in the same way as Austrian nationals. The children of foreign workers were educated in their mother tongue and were also taught German.

64. While the Ombudsman was only competent to examine complaints where the plaintiff did not have recourse to a legal remedy, it was possible to waive the right to such a remedy and to submit a case directly to the Ombudsman. Replying to the question raised by Mr. Yutzis, he said that the Ombudsman was not competent *vis-à-vis* private persons.

65. The non-German ethnic groups in Austria were very small and their rights were safeguarded by the Ethnic Groups Act of 1976. The ethnic minorities had the right to use their mother tongue when dealing with the authorities and education in that language was provided, although most members of the minorities recognized the need to learn German as well. A council

representing the Hungarian group had been set up and the establishment of a council for the Slovene group was imminent. It was also hoped to establish a council for the Croatians at a later date. The councils were designed to advise the Government, particularly with regard to subsidies for ethnic cultural activities. He said that members of ethnic groups in Austria usually held only Austrian nationality.

66. He agreed with Mr. Garvalov that Turkey was a European country and did not know for what statistical reasons Turks were counted as Asians, as was stated in paragraph 18 of the report.

67. The "particular obligations" mentioned in paragraph 5 of the report included, for example, the obligation to undertake a period of military service, which did not apply to foreigners. He added that Austria's ratification of the International Convention on the Elimination of All Forms of Racial Discrimination had not made its provisions directly applicable in domestic law, which explained the need for the Constitutional Law adopted on 3 July 1973.

68. All activities based on Nazi ideology were prohibited under an Act of 1945 and neo-Nazi organizations were therefore illegal.

69. The right to work was not specifically guaranteed by any Austrian legal provisions, as such a right could not be guaranteed in a free market economy. Austrian legislation granted the right to unemployment benefit to foreign workers as well as to Austrian nationals and set standards for working conditions. The country's economic policy aimed at full employment and the current unemployment rate was 4 per cent.

70. He was not aware of any seminars or conferences for young people on the theme of racial discrimination.

71. Austria's system of legal protection was highly effective and legal aid was readily available.

72. Austria's policy towards South Africa was in line with that of the United Nations Security Council. Austria maintained diplomatic relations with South Africa and had an embassy in Johannesburg.

73. Mr. RHENAN SEGURA said that although they were illegal, neo-Nazi associations did exist in Austria. He asked what specific measures had been taken against such organizations.

74. Mr. BERCHTOLD (Austria) acknowledged the existence of a few extreme right-wing groups in Austria. The Austrian Constitutional Court had recently ruled that an association based on Nazi ideology had no legal personality and was therefore not entitled to buy property or to present candidates at any elections. He considered that to be a highly effective method of combating the impact of such groups. He emphasized that neo-Nazi organizations in Austria were very small and totally without political influence.

75. Mr. FERRERO COSTA repeated his question on the extent of Austria's commercial relations with South Africa. He also requested further details on Austria's implementation of article 4 of the Convention, which seemed to be rather limited.

76. The CHAIRMAN reminded Mr. Ferrero Costa that, according to Mr. Partsch, Austria's implementation of article 4 was dealt with extensively in the sixth periodic report (CERD/C/106/Add.12).

77. Mr. BERCHTOLD (Austria) stressed that racial discrimination was prohibited in Austria and said that any instances of special treatment of foreigners in Austria were not racially motivated.

78. Commercial relations with South Africa were discouraged by the Austrian Government but, as Austria was a free market economy, the State had to respect certain limits and could not interfere in economic relations between private enterprises.

79. Mr. RESHETOV said that discrimination could exist among the nationals of a country and did not relate exclusively to foreigners. The scope of article 4 was very wide and all its implications should be taken into account.

80. The CHAIRMAN thanked the representative of Austria for the answers he had given to the questions asked by members of the Committee and looked forward to Austria's following periodic report. The Committee had thus concluded its consideration of the seventh and eighth periodic reports of Austria (CERD/C/158/Add.1).

Mr. Berchtold (Austria) withdrew.

The meeting rose at 1 p.m.

838th meeting

Friday, 11 August 1989
at 3.20 p.m.

Chairman: Mr. LAMPTEY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (*continued*)

Fourth periodic report of Chad (CERD/C/114/Add.2)

1. Mr. FERRERO COSTA, speaking as rapporteur entrusted with the preliminary examination of the fourth periodic report of Chad (CERD/C/114/Add.2), recalled that the Committee had already had before it on two occasions reports submitted by Chad, namely the initial report (CERD/C/15/Add.2) issued in 1979, and the second and third periodic reports issued in 1984 in a single document (CERD/C/87/Add.2). The fourth periodic report also was somewhat old, since it had been issued in 1986. In other words, it was certainly necessary for the information communicated to be updated, particularly since the political situation in Chad had changed since 1984. It would therefore be useful if the Committee requested Chad to transmit to it, in a single document, the fifth to seventh periodic reports covering the period from 1985 to 1990. That updating was all the more essential since at the present time, as on the two previous occasions, the Committee was proceeding to consider the report of Chad in the absence of any representative of the State party and, as it was unable to put questions directly, it could only make comments to be brought to the attention of the State party.

2. The fourth periodic report represented an improvement over the previous reports and, particularly in the first part, gave the Committee some of the information which it had requested, for example concerning the ethnic composition of the population and the relations between the various groups. However, the next report would have to contain additional details on the size of each group in relation to the total population, on the similarities or differences noted with regard to language, level of education and standard of living, and on the participation of each group in public life and the economy.

3. With regard to the implementation of articles 2 to 7 of the Convention, on the other hand, the information transmitted was still insufficient. The part of the report concerning "Measures taken to give effect to article 2" (paras. 6 *et seq.*) mentioned certain basic standards applied in Chad by means of the articles quoted from the Basic Act of 1982 (paras. 6 and 7), but the Committee had no reply to the question it had asked about the implementation of legal standards that might be included in the Constitution of Chad. Furthermore, the report referred (paras. 8 to 12) to labour law standards which were quite old since they pre-dated by three years the entry into force of the Convention and by 11 years Chad's accession to the Convention; he therefore found unacceptable the statement in the report (para. 13) that those standards were "examples of legislative measures taken in Chad to give effect to the undertaking to 'prohibit ... racial discrimination ...'".

4. Moreover, it was indicated in paragraph 14 that the "judicial measures most frequently taken are the awarding of damages to workers dismissed because they belong to some particular race or ethnic group", which meant that Chad explicitly recognized the existence of cases of dismissal based on ethnic grounds, in other words flagrant cases of racial discrimination.

5. Lastly, Chad mentioned in its report (paras. 15 and 16), as an example of non-discrimination, the article of the Chad Penal Code which provided for the death penalty for Chadians and foreigners guilty of treason or espionage; that met none of the applicable standards under the Convention.

6. It must therefore be concluded that Chad did not always respond to the Committee's requests for information, addressed to it under article 9, paragraph 1, of the Convention, on the measures taken to give effect to articles 2 to 7. Consequently, Chad should once again be invited to provide information on general standards prohibiting discrimination and on special measures taken to fulfil the commitments undertaken under articles 2 to 7 of the Convention. It would also be useful to draw Chad's attention once again to the need to comply with the revised general guidelines concerning the form and contents of reports by States parties under article 9, paragraph 1, of the Convention (CERD/C/70/Rev.1).

7. Mr. ABOUL-NASR asked how the Committee was going to inform Chad that it had not complied with the guidelines concerning the submission of periodic reports and that it should also provide more detailed information: he would like to know whether the Committee was going to transit those comments through its report, which he did not think would be very effective, or whether it was going to make a special request to Chad.

8. In his opinion, the Committee could not enter into a dialogue with Chad because it met regularly at Geneva where some impecunious Member States had no Permanent Mission and where, for the same financial reasons, they were unable to be specially represented at the time when the Committee considered their report. In order to treat States parties on an equal footing, the Committee should perhaps consider meeting, where necessary, in New York and postpone until its New York sessions the consideration of the reports of countries whose representatives could not be present at Geneva during that consideration.

9. Mrs. SADIQ ALI endorsed that opinion. Furthermore, as was known, Chad had been at war for some time with the Libyan Arab Jamahiriya and the situation in the country, despite the restoration of diplomatic relations between the two States in October 1988, was still not stabilized. It was therefore commendable that Chad had been able to submit a report, even one that had many shortcomings. Nevertheless, the Committee should make an appeal to Chad along the lines of the suggestions made by the Rapporteur entrusted with the preliminary examination of the periodic report.

10. Mr. PARTSCH supported Mrs. Sadiq Ali's comments. The Committee should note that if it had not established on its own initiative at its third session the system of putting questions directly to a representative of the State party whose report it was considering and whom it had invited to be present on that occasion, the only possibility it would have had to establish communication with the State in question would have been to transmit to it its comments, preferably in the form of a summary record of the meeting at which the report was considered, perhaps under cover of a letter from the Chairman. In his opinion, there was no need to consider other means of communication with Chad.

11. With regard to the substance of the comments to be addressed to Chad, he endorsed the suggestions of the Rapporteur entrusted with the examination of the report. In particular, Chad did not say whether the Basic Act from which it quoted article 18 contained any provision specifically condemning racial discrimination.

12. Mr. RESHETOV said that he, too, noted the fact that it was impossible, from the procedural standpoint, for the Committee to have a dialogue with the State party, made consideration of the report rather difficult, but he refused to find excuses for Chad. The idea of meeting in New York did not seem to him to be a panacea, since Iceland, for example, which had a far smaller population than Chad, had been represented at Geneva during the consideration of its report, while Nicaragua, which had been experiencing an extremely difficult situation for years, had managed in 1988 to send a large delegation to Geneva for the consideration of its report. Therefore, account must also be taken of the question of principle which was at stake, namely the State party's attitude towards its obligations. Respect for its international commitments was an essential responsibility of each State.

13. The CHAIRMAN, speaking in his personal capacity, thought, unlike Mr. Partsch, that it was essential for the Committee to be able to put questions to a representative of the State party when its report was being considered. It was that very necessity which had led the Committee to develop the procedure in question and which had continued to guide it in its work over the 18 years that it had been applied. However, contrary to what Mr. Reshetov thought, very few countries sent a special representative to the Committee for the consideration of their periodic report; most frequently they preferred to be represented by members of their Permanent Mission at Geneva. It was also true that some countries which did not have a permanent representative at Geneva would be better able to have a dialogue with the Committee in New York, where they had a Mission, albeit perhaps a small one. In his opinion, the desirability of holding meetings of the Committee at New York had been obvious from the outset, since the problems connected with meetings at Geneva had appeared from the very first. It might be appropriate for the Committee to reconsider the question at its first session in 1990.

14. With regard to the fourth periodic report of Chad (CERD/C/114/Add.2), he thought that it was merely necessary to follow established practice, in other words to send to the State party the summary record of the relevant meeting, drawing Chad's attention also to the fact that it was several reports in arrears and that they could be grouped in a consolidated document for the consideration of the Committee. Chad should also be made to understand that it should take account of the points put forward by the Rapporteur entrusted with the preliminary examination and that the Committee was inclined to think for the time being that Chad was not honouring its international commitments.

15. Speaking as Chairman, he instructed the Secretariat to arrange for the summary record of the current meeting to be transmitted to Chad, providing it with the necessary information as to what the Committee expected from the State party. He announced that the Committee had concluded its consideration of the fourth periodic report of Chad.

Initial and second periodic reports of Maldives (CERD/C/125/Add.1 and CERD/C/152/Add.1)

16. Mr. PARTSCH, speaking as rapporteur entrused with the preliminary examination of the periodic reports of Maldives (CERD/C/125/Add.1 and CERD/C/152/Add.1), noted that neither of the two reports, which had been submitted by the Government of Maldives and were being considered jointly, was drafted in accordance with the Committee's guidelines (CERD/C/70/Rev.1). Only some very concise information was given on the subject of articles 5 (c) and 3

of the Convention. In those circumstances, the Committee should remind the Government of Maldives that according to its guidelines, "the necessary information ... should be provided by all States parties without distinction, whether or not racial discrimination exists in their respective territories". In the particular case of Maldives, it was not impossible that problems could arise because, for example, of the presence of the mercenaries who had invaded Malé in November 1988 and the large number of tourists.

17. Without repeating all its guidelines, the Committee should draw the attention of the Government of Maldives to the information expected on articles 2, 4, 5, 6 and 7 of the Convention as well as to the need to attach the texts of laws where appropriate. It should also ask more specifically whether the Convention could be invoked before the courts and administrative authorities and whether its provisions could be enforced by those bodies, whether the considerable increase in population which had been recorded was due to a high birth rate or to immigration and, in the latter case, what were the countries of origin of the immigrants. Lastly, the Committee should ask whether the laws and regulations promulgated under the Sultanate had been reviewed for the purpose of amending or deleting any discriminatory provisions.

18. The CHAIRMAN said that the Secretariat would transmit to the Government of Maldives the recommendations proposed by Mr. Partsch.

19. He announced that the Committee had concluded its consideration of the initial and second periodic reports of Maldives (CERD/C/125/Add.1 and CERD/C/152/Add.1).

Eighth periodic report of Tonga (CERD/C/158/Add.5)

20. Mr. YUTZIS, speaking as rapporteur entrusted with the preliminary examination of the eighth periodic report of Tonga (CERD/C/158/Add.5), recalled that during the consideration of the seventh periodic report (CERD/C/131/Add.1) the Committee had expressed the fear that its extreme brevity might indicate the end of co-operation with Tonga. It was therefore appropriate to welcome the submission of the eighth report. However, the report, while slightly more detailed than the previous one, was none the less clearly inadequate. Of course, the Kingdom of Tonga was a very small State, but there were States equally small which complied fully with their obligations under the Convention.

21. Many questions raised during the consideration of the previous reports remained unanswered. There were still questions, for example, concerning the measures taken to combat racism (article 2 of the Convention), the participation of Tonga in the numerous meetings devoted to the elimination of the apartheid system as well as its accession to international instruments concerned with the same subject (article 3 of the Convention), respect for the rights enshrined in article 5, the functioning of the courts (article 6 of the Convention) and the role of the information media and educational system (article 7 of the Convention). With regard to article 4, the authors of the report recognized that no measure had been taken.

22. He suggested that the Committee should inform the Government of Tonga of its observations, through the Secretariat, suggesting that it should make use

of the advisory services in the field of human rights in preparing its next report. The Committee might also re-emphasize the usefulness of continuing the dialogue through a representative.

23. Mr. PARTSCH stressed that Tonga, a small State situated very far from Europe, was party to the Convention without being a Member of the United Nations, to which it did not wish to be admitted because of the high cost that would be involved.

24. The previous reports had contained information on article 5 and the Committee should not therefore revert to that matter. On the other hand, it should draw the attention of the Government to article 4 of the Convention which in Tonga, as in a number of other countries, had not been fully implemented.

25. Mr. ABOUL-NASR said that, without contesting the fact that each State party to the Convention was required to fulfil its obligations under that instrument, he considered that the Committee should demonstrate flexibility. For example, some States had no written legislation and perhaps the Kingdom of Tonga had no Penal Code. He therefore thought it necessary for the Committee to adopt a moderate approach in requesting information on the implementation of the various articles of the Convention, in particular article 4.

26. Mr. YUTZIS recognized that the situation of Tonga was very special, but considered nevertheless that the Committee was entitled to request information on certain points. For example, in paragraph 8 of the sixth periodic report (CERD/C/106/Add.5), the Government had expressed its intention "to introduce into Parliament a Racial Discrimination Act"; the Committee could only wonder what had happened to that Act. The same was true of the provisions of the Act of the Constitution of Tonga concerning Crown lands and hereditary lands (paras. 17 and 18 of the sixth report), on which the Committee was still awaiting detailed information. The absence of trade unions, explained in paragraph 26 of the sixth periodic report by the fact that the need for such bodies had not yet risen, also gave food for thought, particularly since there were 3,000 Government officials in the country. Those were merely examples of questions which the Committee could legitimately put without fear of exceeding its competence.

27. Mr. RESHETOV said that, by ratifying the Convention, the Kingdom of Tonga had undertaken to provide information which the Committee should request it to include in its next report. He would like to know the most recent data on the demographic composition of the population which, according to paragraph 3 of the report, had not yet been officially released.

28. The CHAIRMAN, speaking as a member of the Committee, thought that, however inadequate it might be, the eighth periodic report of Tonga (CERD/C/158/Add.5) indicated some goodwill and a clear intention to reply to the Committee's questions. That being so, the State party should, like all others, fulfil the obligations which arose under article 4 of the Convention. If, as could be thought, Tonga had no Penal Code, the authorities could at least inform the Committee of that fact and describe the applicable legal system. Whenever a State indicated in its report that no racial discrimination existed and that there was no need to take the measures

indicated in article 4 of the Convention, as was stated in paragraph 9 of the Tonga report, the Committee replied that the measures in question sought not only to punish certain acts but also to prevent them.

29. The Secretariat would transmit to the Government of Tonga the part of the summary report of the 838th meeting devoted to the consideration of its eighth periodic report, drawing its attention to the need to include in its next report all the information requested.

30. He announced that the Committee had concluded its consideration of the eighth periodic report of Tonga (CERD/C/158/Add.5).

Eighth, ninth and tenth periodic reports of the Niger (CERD/C/172/Add.1)

31. Mr. PARTSCH, speaking as rapporteur entrusted with the preliminary examination of the reports of the Niger, said that the consolidated report submitted by the Niger and issued as document CERD/C/172/Add.1 covered the years 1984 to 1987 and was dated 14 October 1987. Only four weeks after that date General Seyni Kountché, the former President of the Republic, had died and Colonel Ali Saïbou had assumed power. Subsequently, changes - in his opinion, changes for the better - had occurred in the domestic situation of the Niger. Hundreds of political prisoners detained without trial had been either released or brought before the courts.

32. In that context, it was particularly regrettable that the report could not inform the Committee of the effects of those political changes and of the consequent legal changes, for example the elaboration of a new constitution. He also recalled that the Niger had ratified the African Charter of Human and Peoples' Rights in May 1986, and shortly afterwards the two International Covenants on Human Rights and the Optional Protocol.

33. He proposed a number of questions on the basis of a report which was not up-to-date, it being understood that improvements could have occurred in the meantime in the respective fields.

34. From the general standpoint, he asked whether the Constitution of the Niger was still suspended or whether the work on a new constitution based on the National Charter of 1987 had been completed. He would like to know whether a draft constitution existed or whether a constitution had already entered into force. Referring to article 4 of the Convention, he asked whether a new Penal Code or an amendment to article 102 had been adopted to make also punishable the creation or maintenance of racist organizations. The relevant text should be submitted. With regard to article 5 of the Convention, he wondered whether article 222 of the former Penal Code also applied to acts committed by Government officials or the latter were covered exclusively by administrative procedures. He would like to know how the ethnic or linguistic groups were represented in elected bodies. He asked whether they had any influence on the presentation of candidates in elections. He would like to know whether the new articles of the Rural Code and those concerning the right to inherit had come into force.

35. On article 5, he proposed to ask what new results had been achieved in improving the public health system and how many physicians were available in the Agadèz district; he recalled that Agadèz was the main oasis in the country's northern desert, populated by Tuareg. In addition, he would welcome

information concerning developments with regard to school enrolment (17.3 per cent in 1971). He asked whether primary education was given in the various mother tongues and whether it had been possible to overcome the difficulties in the "nomad schools" resulting from the reluctance of parents to enrol their children. He would like to know whether the attempt to introduce an African language instead of French, the official language, had produced results. He thought that it was an interesting project but that it could give rise to difficulties: 51 per cent of the population spoke Hausa, but the Tuareg in the north, in particular, did not speak that language, and it could be feared that if Hausa became the national language, those who did not speak it might be at a disadvantage. Finally, with regard to article 6, he proposed to ask what was the legal basis for claiming damages in civil courts if article 102 of the former Penal Code had been violated.

36. Lastly, he regretted the absence of a representative of the Niger, particularly since he had been the first member of the Committee to request that States parties should be invited to participate in the consideration of their reports. He recalled that the proposal had met with some opposition (in particular, the objection had been raised that the Convention made no such provision) before finally being accepted.

37. Mrs. SADIQ ALI said the fact that some difficulties continued to exist in the Niger was demonstrated by the activities of an opposition movement which claimed to be fighting against the régime in order to establish a civilian democracy: the Mouvement nigérien de coordination révolutionaire (MOUNCORE) (Revolutionary Co-ordination Movement of the Niger).

38. The CHAIRMAN observed that many countries had opposition groups which sought to overthrow the Government, in many cases from abroad. The Committee should confine itself to questions concerning discrimination if it did not wish to be exposed to sharp reactions from Governments, as had happened in the past.

39. Mrs. SADIQ ALI said that she had merely wished to bring out the fact that the difficult economic situation in the Niger was leading to the emergence of opposition movements.

40. Mr. GARVALOV agreed with the President that the Committee should confine itself to questions relating to the Convention and not venture into areas which came under the International Covenants on Human Rights.

41. The CHAIRMAN said that the records summarizing the observations of Mr. Partsch and the discussion on the report of the Niger (CERD/C/172/Add.1) would be transmitted to the Government of that country with a view to obtaining replies from it in the next report. Mr. Partsch had referred to the origins of the dialogue with States parties; he (the Chairman) thought that the best way of ensuring that dialogue was to see to it that States parties were indeed present. In that regard, the fact was that it was only in New York that the majority of States parties could attend meetings of the Committee. At Geneva, even States which had Missions in that city did not appear before the Committee because, according to them, their experts were in New York. For the information of Mr. Aboul-Nasr, he confirmed that some States which did not send representatives to the Committee's meetings did have Missions at Geneva; they considered that, even then, they could not be adequately represented.

42. Mr. RESHETOV drew attention to the fact that the practice of the Human Rights Committee showed that States also sent representatives to Geneva.

43. The CHAIRMAN noted that it was the Human Rights Committee which had adopted the methods of the Committee on the Elimination of Racial Discrimination, and not the contrary, since the latter had been in existence for 20 years. The Human Rights Committee did in fact hold one of its sessions in New York. Furthermore, no representative of the Niger or Maldives had appeared before the Human Rights Committee at Geneva. In that connection, it must be borne in mind that the developing countries did not have the same financial means as the developed countries to send representatives.

44. Mr. ABOUL-NASR pointed out to Mr. Reshetov that the Convention itself provided that the Committee on the Elimination of Racial Discrimination should meet at United Nations Headquarters. He added that it was easier in New York than at Geneva to obtain information on dependent territories (which came within the terms of reference of the Committee), since at Headquarters there was a special division concerned with those territories.

45. The CHAIRMAN suggested that the Committee should conclude its consideration of the report of the Niger (CERD/C/172/Add.1), on the understanding that the Government of the Niger would be informed of the results of that consideration in the manner which he had just indicated.

It was so decided.

The meeting rose at 5.05 p.m.

839th meeting

Monday, 14 August 1989
at 10.20 a.m.

Chairman: Mr. LAMPTEY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (*continued*)

Sixth and seventh periodic reports of Rwanda (CERD/C/146/Add.1 and CERD/C/169/Add.1)

At the invitation of the Chairman, Mr. Kabagema (Rwanda) took a place at the Committee table.

1. Mr. KABAGEMA (Rwanda), introducing the sixth (CERD/C/146/Add.1) and seventh (CERD/C/169/Add.1) periodic reports of Rwanda, said that as the ultimate aim of the Republic of Rwanda was to create a democratic society governed by the principles of peace, justice and equality, all members of the executive, legislature and judiciary constantly sought to eradicate any form of discrimination. The country's sole political organization, the National Revolutionary Movement for Development (MRND) was designed to achieve harmony between the various components of the Rwandese nation on the basis of equality and mutual respect with a view to ensuring all-round economic, social and cultural development for all citizens. Article 16 of the Constitution laid down the principle of total equality without any discrimination whatsoever, while articles 12 to 33 covered all fundamental human rights and freedoms, as defined in the Universal Declaration of Human Rights. The Republic of Rwanda was a party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Suppression and Punishment of the Crime of *Apartheid* as well as the International Convention on the Elimination of All Forms of Racial Discrimination and all provisions relating to fundamental human rights and freedoms had been incorporated into its basic law.

2. The sixth report re-emphasized that, under the Rwandese constitutional system, an international convention took full effect internally as soon as it had been ratified without any need for the adoption of other legal or administrative measures. Previous reports had given a detailed description of the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination under the country's legislative system.

3. As stated in earlier reports, the Rwandese nation was made up of three ethnic groups: the Batwa, the Bahutu and the Batutsi.

4. He drew attention to article 16 of the Constitution, which upheld the equality of all citizens and stipulated that all Rwandese legislation must comply with constitutional principles, particularly those concerning human rights and equality. The Constitutional Court examined legislation to ensure its conformity with the Constitution.

5. The Government had done its utmost to implement the International Convention on the Elimination of All Forms of Racial Discrimination in all areas of national life. Racial discrimination was totally prohibited under Rwandese law.

6. Mr. PARTSCH, speaking as rapporteur entrusted with the preliminary examination of the sixth (CERD/C/146/Add.1) and seventh (CERD/C/169/Add.1) periodic reports of Rwanda, said that both reports were of a remarkably high standard and followed the Committee's guidelines on presentation (CERD/C/70/Rev.1). The seventh report had answered many of the questions raised by the sixth report.

7. The sixth report stated that the three ethnic groups in Rwanda spoke the same language, kinyarwanda. He was therefore unclear as to the relevance of the "policy of balance ... in teaching in proportion to the representation of each ethnic group", referred to in paragraph 21. Was kinyarwanda only a second language for certain ethnic groups?

8. He asked whether the special measures to improve the education of the Batwa people mentioned in paragraph 24 of the sixth report had enabled members of that group to qualify for employment in the State administration.

9. Articles 393 and 281 of the Criminal Code did not appear to include provisions penalizing incitement to racial acts. He asked whether such incitement was punishable under the general provisions of the Rwandese Criminal Code or if there were plans to introduce an amendment.

10. As the National Revolutionary Movement for Development was the sole political organization in Rwanda, he asked whether the right to freedom of opinion and expression could be exercised only within that Movement and whether the President's actions could be criticized.

11. Owing to the country's limited financial resources, it had been impossible to implement certain social rights in Rwanda. He would like to know whether there were any projects designed to establish such rights as unemployment benefit, social security for non-wage-earners and comprehensive education.

12. Mr. SONG Shuhua praised the high quality and comprehensive nature of the reports. He agreed with Mr. Partsch that the seventh report supplemented the information given in the sixth report. He commended the attitude adopted by Rwanda towards South Africa, as described in the sixth report.

13. Paragraph 23 of the sixth report (CERD/C/146/Add.1) stated that kinyarwanda was the only language spoken by all Rwandese but he asked to what extent the written form was used nationally and what the level of illiteracy was in Rwanda.

14. He asked whether the Government of Rwanda had appointed an ombudsman to investigate alleged violations of the law by State employees.

15. Paragraph 53 of the seventh report (CERD/C/169/Add.1) stated that full exercise of the right to education and vocational training still had to be achieved because of the economic difficulties faced by Rwanda as a developing country. He asked what percentage of Rwandese nationals had access to higher education and how places were distributed among the various ethnic groups.

16. Mr. RHENAN SEGURA said that the sixth (CERD/C/146/Add.1) and seventh (CERD/C/169/Add.1) reports of Rwanda represented a significant improvement on previous reports.

17. With regard to the right to vote in Rwanda, he asked for a definition of the "objective criteria" referred to in paragraph 38 of the sixth report as determining eligibility. Paragraph 44 stated that to be eligible for election as deputies, persons must, inter alia, "possess a diploma attesting that they had successfully completed at least four years of secondary schooling or an equivalent qualification". He would like an explanation of the phrase "four years of secondary schooling" and information on the literacy rate of the Rwandese population. Such a condition might represent indirect discrimination.

18. Mrs. SADIQ ALI said that the fifth periodic report (CERD/C/115/Add.2) had referred to the start of negotiations with the Government of Uganda on the possible repatriation of 45,000 Ugandan refugees in Rwanda. She asked for up-to-date information on the status of those refugees.

19. It had also been stated that the President of Rwanda was endeavouring to eradicate corruption from the State administration. He had established a committee of public ethics to draft a code of conduct for government employees which had been due to enter into force in 1987. She requested information on the progress made.

20. Rwanda was the most densely populated country in Africa and had a population growth rate of 3.7 per cent. As the Rwandese people was predominantly Roman Catholic, she asked whether attempts had been made to involve the Roman Catholic Church in solving the problem of over-population.

21. She applauded the presidential amnesty under which many Rwandese prisoners had been released on 1 July 1988.

22. Mr. BANTON drew attention to paragraph 21 of the sixth periodic report (CERD/C/146/Add.1), which referred to a "policy of balance". He asked whether that policy involved the establishment of compulsory quotas or merely set targets. He also requested information on how the policy was operated and asked whether classification was based on an identity document stating ethnic origin, an administrative decision or the free choice of the individual concerned. Such information was vital to any assessment of the policy.

23. Mr. SHAHI referred to the recent disturbances and killings in neighbouring Burundi and the resulting influx of refugees into Rwanda. He asked what steps had been taken by the Government to deal with the situation and to prevent the spread of ethnic conflict to Rwanda.

24. Mr. GARVALOV said that the sixth (CERD/C/146/Add.1) and seventh (CERD/C/169/Add.1) reports under consideration had been prepared in conformity with the guidelines, as in the past. Referring to paragraph 30 of the sixth report and paragraphs 24 and 25 of the fifth report (CERD/C/115/Add.2), which all dealt with penalties for racist organizations, he wished to know whether there was any provision in the Criminal Code or other legal instrument, in addition to the penalties referred to in those paragraphs, for the dissolution of organizations pursuing racist policies or practices, and whether it was indeed theoretically possible to form such organizations.

READEX FICHE

25. Mr. KABAGEMA (Rwanda) thanked the Committee members for their comments on the substance and form of the sixth and seventh reports. Replying to Mr. Partsch's question about the kinyarwanda language, he confirmed that the Batwa, the Bahutu and the Batutsi all spoke the same language and shared the same culture. None of the three groups had its own language, and there was no research to date that could trace kinyarwanda back to any particular ethnic group, although linguistically it was thought to belong to the Bantu group of languages. Pursuance of a policy of balance in education and in job allocation in proportion to the representation of each ethnic group in the population as a whole, referred to in paragraph 21 of the sixth periodic report, had been prompted partly by the need to do away with the feudal monarchic system which had prevailed until independence in 1962, a system under which a single ethnic group had predominated in education and the civil service, and partly by the Government's endeavour to develop a system that would enable the limited places available in education to be distributed equitably among all three ethnic groups in proportion to their representation in the population.

26. An affirmative reply could be given to the question whether special educational measures for the Batwa population had enabled it to seek employment in public service. After independence, it had been found that that group was not totally incorporated into the mainstream of society, which was why exceptional measures had been taken. They had proved successful, since a number of members of that group were now employed in the civil service, and pursued their studies up to university level. The Batwa had thus now taken their rightful place in society.

27. No amendment was planned to the Criminal Code to provide specifically for the punishment of incitement to racial acts, but it could be said, as Mr. Partsch had suggested, that such incitement was punishable *de facto* under the general provisions of the Code, since any denouncement or complaint concerning such actions automatically led to the institution of legal proceedings and the imposition of the appropriate penalties for a proven offence.

28. The exercise of freedom of opinion and expression was not only permitted within the National Revolutionary Movement for Development (MRND) but encouraged by the MRND, which was so structured as to stimulate free expression and exchanges of ideas through meetings involving representatives of the whole population. The MRND was a political movement, serving a politically catalytic role, and its existence in no way precluded the expression of other, non-political opinion, which was guaranteed by the Constitution.

29. As to the implementation of the social rights referred to by Mr. Partsch, Rwanda's situation had been described in the reports it had submitted on its implementation of the two International Covenants on Human Rights; it could be said that the efforts of the Government and the people were focused on the development of the nation and consequently on the practical implementation of those rights. For instance, while all wage-earners were already covered by the social security system, additional provisions were currently being worked out to provide coverage for independent workers, including farmers and self-employed persons. With regard to unemployment benefit, Rwanda shared the problems of most developing countries, but the Government was doing all it could to encourage job creation in public and private enterprises alike. It was not so much a question of unemployment as of under-employment of a not

very highly skilled population. Government efforts were therefore being concentrated on improving qualifications through education and training geared to the world of work, as described in the seventh report.

30. In response to a question by Mr. Song Shuhua, he said that kinyarwanda was both a written and oral language used as the medium of instruction in primary schools and taught as a subject at all levels of education, which included the advanced study of the language and linguistic research at university level.

31. Rwanda's legal system had no provision for an authority like an ombudsman, but recourse procedures for ordinary citizens existed within the administrative and judicial system. Details had been given in the fifth report (CERD/C/115/Add.2), but basically there was an established recourse procedure enabling any citizen to seek remedies against any administrative injustices committed against him, and if justice were not done, the case could ultimately be settled by the Council of State, which was empowered to reverse any administrative decision found to be illegal. Citizens were also entitled to take cases before the Court of First Instance; submission of a case automatically resulted in the institution of legal proceedings. Civil servants were subject to the same laws as other citizens, and indeed the fact of being a civil servant could be regarded as an aggravating circumstance if it was found that an act causing prejudice to individual rights had been committed in the course of duty. So far, the system of recourse had functioned satisfactorily, which was why it had not yet been found necessary to introduce the institution of ombudsman.

32. Primary education in Rwanda was free and compulsory for all children of school age (8 to 15 years). Only some 10 to 12 per cent of young people were admitted to secondary education, however, as it was not yet possible to meet the demand. Those who did not enter secondary education were directed towards what was known as integrated rural and crafts education, a three-year vocational training course. As he had said before, the allocation of secondary school places was proportionate to the share of each ethnic group in the overall population.

33. Objective criteria for eligibility for the exercise of political rights, such as nationality, age and mental aptitude, had been given in the reports; basically, they could be said to define a normal citizen in a position to express his will. The expression "persons being held by the authorities" in paragraph 41 of the sixth report referred to persons who had not committed criminal offences but were considered to be in a state of "pre-delinquency" and as such were in reformatories.

34. With regard to the four years of secondary schooling required in order to become a deputy, it was not correct to describe that requirement as discriminatory, since it had been requested by the population itself at the Fourth Congress of the National Revolutionary Movement for Development. A deputy, over and above his role as representative, had to be a promoter of development, and therefore had to understand certain technical provisions. The Congress had considered that to be capable of discussing draft laws and bills, most of which aimed at development, deputies needed an appropriate level of education.

35. The literacy rate in Rwanda was between 60 and 70 per cent. The number of people with four years of secondary schooling was certainly lower, but, as he had already said, the criterion for the office of deputy was not discriminatory: it was an objective criterion which anyone from any ethnic group in the country could meet.

36. In reply to the question by Mrs. Sadiq Ali concerning the present situation of 45,000 Ugandan refugees who had come to Rwanda in 1982, he said that as soon as those refugees had arrived, the Government of Rwanda had contacted the Government of Uganda and they had jointly studied the situation to find the best solution. The Government of Rwanda had immediately granted asylum to the refugees and a joint commission had been set up to try to determine their nationality. From the Ugandan point of view, all the refugees from Uganda were Rwandese who had to be repatriated. However, the situation had proved more complicated; some of the refugees had returned to their villages in Rwanda; in some cases where they had no villages to which to return, the Rwandese Government had found places for them; still others had been identified as Ugandan nationals and had been taken back by the Ugandan Government.

37. Replying to Mrs. Sadiq Ali's question on the status of the code of conduct for government employees, he said that, in January 1989 the Head of State had set up a committee to draft a code of conduct within a specified time-limit for consideration by the Government and subsequent submission to Parliament.

38. Replying to the question concerning demographic problems, he said that one of the major problems in Rwanda was that of the disparity between demographic and economic growth. The Government had therefore launched a policy to make the population aware of family planning and at the same time to promote economic development; in 1976 it had set up a family planning office. An appeal to the churches had been made and had been well received; all churches in Rwanda were participating in the policy of familiarizing the population with family planning.

39. Mr. Banton had asked whether the "policy of balance" referred to in paragraph 21 of the sixth report was a policy of quotas or targets. The answer was both. The purpose of the policy was to allow an equitable and just distribution of wealth among the different elements of the population. It was designed to prevent the country from reverting to its former feudal system and to ensure that the majority group and the two minority groups would be treated according to the proportion they represented in the total population. The Batutsi, for example, received the number of places in education corresponding to their relative numbers. It was in the public sector of education that the principle of just distribution was applied, but the private sector was recommended to respect that principle and there were also parents' associations to promote it.

40. As to the means of establishing membership of ethnic groups, the system of self-identification which Mr. Banton had mentioned was the operative one. The ethnic group was initially defined by the census bureau. When anyone registered for any service or reported a birth, the ethnic group was recorded. A candidate for public service had to produce documents from his place of residence attesting his civil status; it was by those documents that people were identified in terms of their ethnic group. Everyone knew his own group.

41. With regard to the question of refugees from Burundi, mentioned by Mr. Shahi, approximately 60,000 refugees had come to Rwanda from Burundi following events in two communes in the latter country. Rwanda had been guided in its action by the Convention relating to the Status of Refugees and by the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. The Burundi refugees had been welcomed in Rwanda by the people and the Government, which had launched an appeal to the international community. Once the refugees had been settled in camps with the assistance of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Red Cross, the Government had contacted the Government of Burundi, and the problem had been dealt with within the framework of the subregional community, including the Government of Zaire, and with the support of UNHCR. As a result, an overwhelming majority of the refugees had been voluntarily repatriated. There were, however, still 956 refugees in Rwanda, and a committee presided over by UNHCR was at present trying to find the best solution for them. Given that Rwanda was already over-populated, their living conditions were difficult and the Government and UNHCR were looking into the possibility of resettling them in a larger country.

42. In reply to Mr. Garvalov's questions regarding racist organizations, he said that the penal provisions in Rwanda were explicit: since the Constitution imposed the principle that discriminatory associations should be discouraged, such associations were not granted legal status. The penalties for their establishment were very heavy; their members were prosecuted and the assocations themselves were automatically dissolved.

43. Mr. RHENAN SEGURA said that he thought no system could be democratic if it were entirely in the hands of a single political party. He asked with reference to article 5 (c) of the Convention whether it was possible for Rwanda to have other political parties besides the National Revolutionary Movement for Development or whether their existence would be contrary to law. He also observed that, according to the statement by the representative of Rwanda, only 10 per cent of the population received a secondary education and that therefore only a small group in Rwanda enjoyed full political rights.

44. Mr. ABOUL-NASR said that the Committee should not deal with all aspects of human rights but only with questions of racial discrimination. It could not pass judgement on whether or not a country was democratic. He could give examples of countries with more than one party which were not democratic. The stage of a country's development also had to be taken into account. Some countries could not afford the luxury of many political parties. Different groups might also exist within a single political party.

45. Mr. GARVALOV congratulated the representative of Rwanda on the fact that, according to paragraph 8 of the sixth report (CERD/C/146/Add.1), the country's constitutional system provided for an international convention to take full effect internally as soon as it had been ratified. With regard to the comments by Mr. Rhenan Segura and Mr. Aboul-Nasr, a very fine line separated the scope of the International Convention on the Elimination of All Forms of Racial Discrimination from that of the International Covenants on Human Rights. When the Committee overstepped that line, as it had sometimes done, that always gave him cause for concern.

46. The CHAIRMAN, speaking in his personal capacity, said that the consideration of periodic reports should be based solely on the definition of racial discrimination given in article 1 of the Convention, and that, in his view, the representative of Rwanda did not need to answer a question such as that put by Mr. Rhenan Segura. There was nothing in article 1 of the Convention to suggest that the Committee should pass value judgements; he himself believed in the multi-party system, but he did not think that, in a world full of diversity, the values or philosophical concepts of one country had to coincide with those of another. He had been in countries claiming to be democratic where he had seen human beings living lives that would shock anyone coming from the least-developed areas of the world. On the other hand, he had been in countries charged with being undemocratic where there was a higher quality of life than he had seen in some highly developed countries. The Committee should eschew the discussion of what constituted democracy, because such questions did not come within its province.

47. Speaking as Chairman, he thanked the representative of Rwanda and said that the Committee had concluded its consideration of the sixth and seventh periodic reports of Rwanda (CERD/C/146/Add.1 and CERD/C/169/Add.1).

Mr. Kabagema (Rwanda) withdrew.

Ninth and tenth periodic reports of Mongolia (CERD/C/149/Add.23 and CERD/C/172/Add.10)

At the invitation of the Chairman, Mr. Bayart (Mongolia) took a place at the Committee table.

48. Mr. BAYART (Mongolia), introducing the ninth (CERD/C/149/Add.23) and tenth (CERD/C/172/Add.10) periodic reports of Mongolia, said that they covered the period December 1985-August 1988 and provided detailed information on the action taken in his country to meet the aims of the Convention. The reports shed light on the developments in the Mongolian judicial system which gave effect to the provisions of the Convention and sought to respond to the greatest possible extent to the questions raised and comments made by members of the Committee during the examination of his Government's eighth periodic report (CERD/C/118/Add.22).

49. He stressed that since the Committee's consideration of the eighth report, no single instance of a violation had been recorded in his country, a fact which showed clearly that Mongolian legislation prohibiting discrimination and guaranteeing equality effectively protected victims or compensated for harm caused in the event of discrimination based on race, sex and nationality.

50. Important changes were taking place in Mongolia at the present time in connection with the restructuring and renewal of all spheres of life. They entailed a reform of the judicial system through the updating and enforcement of existing legislation, the enactment of new legislation and improvement of the community's knowledge of legal affairs.

51. Since the submission of the tenth report, efforts to clarify and supplement existing legislation relating to the Convention had produced positive results. For example, the new version of the Citizenship Act of the Mongolian People's Republic clearly provided in its article 14 that "aliens or stateless persons are granted Mongolian citizenship upon their own application,

irrespective of race, nationality, sex, education, language or place of residence". Under article 14 of the Act, children under 15 years of age of persons who had acquired Mongolian citizenship enjoyed the rights of citizens of Mongolia. According to article 12, children of stateless persons born in the territory of Mongolia were citizens of that country.

52. The bill on co-operatives had been adopted and would come into force on 1 January 1990, thus providing extensive rights and opportunities for all Mongolian citizens above the age of 16 to engage in self-employed activities.

53. In pursuance of their right embodied in article 5 (e) (iv) of the Convention, under a recently adopted decreee of the Presidium of the Great People's Khural on measures to avoid AIDS, all citizens of Mongolia had the right and obligation to undergo screening for HIV infection. Foreigners and stateless persons enjoyed the same right and obligation.

54. His delegation would do its utmost to respond to and reflect the valuable comments and questions of the members of the Committee in future periodic reports.

55. Mrs. SADIQ ALI, speaking as rapporteur entrusted with the preliminary examination of the ninth (CERD/C/149/Add.23) and tenth (CERD/C/172/Add.10) reports of Mongolia, said that a word of caution was necessary, because no society was free from racial discrimination.

56. The tenth report of Mongolia stated that Fascist policies were incompatible with the nature of socialist society, which aimed to ensure genuine equality for all citizens in all spheres of social life, irrespective of their social and national origins. The turbulence in the Soviet Union negated the truth of that statement and the situation unfolding there was more complex.

57. In reply to requests for further information on changes that had taken place in the population, the ninth and tenth reports referred only to the Kazakhs, who formed 5.4 per cent of the population. Yet, the ninth report stated on page 2 that there were 25 nationalities and ethnic groups living in Mongolia, while the tenth report said on page 4 that there were 14 nations. She therefore thought that further information should be furnished about the numbers and social status of those nationalities and ethnic groups.

58. In the oral report by the representative of Mongolia following the submission of the eighth report (CERD/C/118/Add.22), it had been indicated that over 90 per cent of the population spoke Mongolian, which included a number of dialects, while the Kazakhs spoke their own language. She would like to know what was the language of instruction used for those who spoke dialects and how were the nomadic and pastoral people required to study under the Public Education Act of 1982. She also asked whether the Soyombo script was common to all the dialects and what was the literacy rate of the nomadic and pastoral peoples. It would be interesting to know whether the goal of the programme adopted in 1987, namely, that all children should have access to a complete secondary education by the end of 1985, had been achieved.

59. In May 1983, 6,000 to 7,000 Chinese had been systematically expelled from Mongolia. They had lived and worked in the country for several generations and she would like to know why they had been expelled. In recent years, Sino-Mongolian relations had improved. She asked whether the arbitrary expulsions had ceased and how many Chinese remained in Mongolia. She would like to know whether those residing in Mongolia were permitted to visit, and be visited by, ethnic Mongolian relatives whose homes were in China. She would also like to know whether any consular treaty had been signed by Mongolia and China.

60. She noted that no reply had been given to the Committee's request for information concerning the composition of the labour force by nationality.

61. The USSR's involvement in the economy was focused on the mining of non-ferrous minerals that were subsequently shipped to the Soviet Union for processing. She would like to know how many Soviet citizens were involved and what positions were held by Mongolians.

62. Referring to the statement on page 5 of the tenth report that, since 1987, Mongolia had been involved in a large-scale economic reform, she asked whether that would also affect large-scale industries. The majority of the population was still engaged in agricultural pursuits and associated light industry, which, presumably, came within the category of self-employed activities. She would like to know whether perestroika was having any influence on the economy.

63. With regard to article 2 of the Convention, she noted that a comprehensive review of the legal code was currently under way and that the relevant provisions might be presented to the Committee when the work was completed.

64. With regard to article 3, Mongolia's role was most commendable. She would like to know whether Mongolia provided any financial support to United Nations bodies fighting apartheid and helping the liberation movements.

65. The reply given with reference to article 4 evaded the basic question. It seemed that, according to Mongolia, the requirements of the article were basically covered by constitutional guarantees, the violation of which was a penal offence. However, a more direct approach was needed in order to make it clear to the general public that certain acts were punishable by law. The Government had been requested to provide specific legislation, under article 4 (a), and it was from that standpoint that members had sought clarification of the eighth report, considering that the provisions of subparagraphs (b) and (c) had not been fully covered.

66. In the ninth report, the Constitution and Codes of Criminal Procedure and Civil Procedure had again been quoted, whereas the legislation pertaining to those two items had not been given. While the provisions of article 30 of the Penal Code were described in a general manner in the tenth report, it would be preferable to have the relevant texts.

67. With reference to article 5 (c), the ninth report mentioned the Great People's Khural which, it was said, met for three days once a year. She would like to know how much business it transacted in that short period and what was its actual role vis-à-vis the State.

68. With regard to article 5, it had been stated that the Mongolian Civil Code recognized the right to private ownership of property and, consequently, the right of inheritance. While the ninth report quoted article 7 of the Civil Code granting that right, no mention was made of land as being in private ownership and it was therefore not clear whether there was any right of inheritance to land. She would welcome information on that point.

69. Noting that travel and residence changes were decided by the State, which also determined work assignment on the basis of qualifications, she asked whether that situation was in the process of change.

70. With reference to article 5 (d) (vii), she said that it would be interesting to learn how Buddhism, which had been a State religion of Mongolia for several centuries, was given prominent mention even today in the socialist Constitution. It would be of interest to know how the equilibrium between Buddhism and socialism was tolerated in what was fundamentally an atheist State. She would like to know whether there were any mosques for the Islamic Kazakh minority of 80,000 in western Mongolia.

71. With regard to article 5 (d) (ix), she asked what was the role of the citizens volunteers' committees at the neighbourhood level.

72. Referring to the right to work, she would like to know the percentage of employment in Mongolia.

73. As to the right to housing, she asked what percentage of Mongolians had houses.

74. Referring to article 5 (e), she would like to know whether Mongolian citizens had access to Western literature and science books in their education.

75. Noting that article 85 of the Constitution guaranteed the right of citizens to lodge an appeal against legal and discriminatory actions by State bodies, she said it would be useful if some cases could be cited. If no such cases had come before the courts, that meant presumably that people were not fully aware of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and of the Convention, which the Government should disseminate widely, since it might not be the Government which discriminated but rather individuals.

76. With regard to the statement at the bottom of page 5 of the ninth report that such measures as holding a person in custody pending trial might be taken only when the conditions provided for in articles 87 and 88 of the Code of Criminal Procedure were fulfilled and with the sanction of the Procurator, and that an official violating that procedure was criminally responsible, she asked whether there were any cases to illustrate whether genuine action had been taken against any official who had violated that procedure.

77. Referring to the information provided under article 6 in the ninth report, she noted that the cases of discrimination were based only on nationality and not on ethnic groups, race, colour or descent.

78. Mongolia had made great efforts to implement article 7. More information would be welcome on what it was doing to raise the level of legal awareness, through proper education and training, of teachers, lawyers and magistrates, the police and other security personnel who had to deal with the public.

79. Mr. SHERIFIS, noting the statement on page 2 of the tenth report (CERD/C/172/Add.10) that, since the last report had been submitted, a variety of legislative provisions had been adopted prohibiting all forms of racial discrimination, said that he would have expected the report to give a detailed list of the relevant legislation.

80. With regard to article 5 (d) (i), he would like to know whether freedom of movement and residence was guaranteed to all citizens and whether there were any restrictions on that basic right.

81. While appreciating the quality of representation in the Legislative Branch of the Government, he asked what was the situation with regard to participation of all the minorities in the Executive Branch.

82. Referring to pages 4 and 5 of the tenth report, he asked whether the bill on State enterprises was still under consideration or whether it had been adopted.

83. Turning to the process of perestroika, he said he would appreciate any comments from the representative of Mongolia concerning the extent of its implementation in his country since the submission of the tenth report.

84. Lastly, he noted the assurance given under article 7 in the tenth report of the fact that more and more emphasis was being given to enhancing and extending democracy and to the need to raise the level of legal awareness of citizens substantially.

85. Mr. PARTSCH recalled, with regard to article 4 of the Convention, that the eighth report of Mongolia (CERD/C/118/Add.22) had provided extracts from the Penal Code of 1961. According to the tenth report, a new Penal Code had been adopted and it was stated that the provisions of article 70 of the Penal Code conformed fully to article 4 of the Convention. He would like to know whether the wording of article 70 corresponded to the wording of article 53 of the previous Penal Code. It seemed that the new Penal Code contained no provision prohibiting illegal organizations in view of the statement on page 4 of the tenth report (CERD/C/172/Add.10) that in Mongolia "by virtue of the application of this legislation, there is no racist propaganda or any racist organization whose activities would have to be banned". On the basis of the previous Penal Code, he had come to the conclusion that subparagraph (a) of article 4 of the Convention had been implemented but not subparagraphs (b) or (c).

86. Mr. ABOUL-NASR, noting the discrepancy between the number of national minorities indicated in the ninth (CERD/C/149/Add.23) and tenth (CERD/C/172/Add.10) reports, said that he would like to know what was the difference between the terms "nationalities" and "ethnic groups" and what was their exact number.

87. It had been stated that Mongolia was in the process of restructuring its legislation. An earlier report of Mongolia had stated that the nationality question had been fully and finally resolved in that country. However, he did not think that it was possible for the problem to be resolved definitively and stressed that Governments had to continue to deal with it in accordance with the Convention.

The meeting rose at 1 p.m.

840th meeting

Monday, 14 August 1989
at 3.25 p.m.

Chairman: Mr. LAMPTEY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Ninth and tenth periodic reports of Mongolia (CERD/C/149/Add.23 and CERD/C/172/Add.10) (concluded)

At the invitation of the Chairman, Mr. Bayart (Mongolia) resumed his place at the Committee table.

1. Mr. SHAHI thanked the representative of Mongolia for his clear and lively introduction of his country's tenth periodic report (CERD/C/172/Add.10), which contained particularly interesting information. He requested clarification of the number of nationalities, as the ninth (CERD/C/149/Add.23) and tenth reports gave different figures. He also inquired about the existence of Mongolian tribes and whether there were ethnic differences between them. He wished to know whether the various ethnic groups genuinely participated in public life and were adequately represented in the executive and legislative organs and the State administration.

2. Mr. SONG Shuhua requested additional information on the present state of industry and the rural economy. Would the extensive rights to engage in self-employed activities granted to citizens under the current economic reform programme also apply to agricultural workers? He asked whether in accordance with the programme adopted in 1987, all children would have access to secondary education by the end of 1995 and he inquired as to the methods used to provide education for children in nomadic tribes. The last paragraph under article 6 on page 5 of the tenth report stated that, in view of the absence of racial discrimination, no case of that kind had come before the courts and he asked whether that was due to public unawareness of the various international treaties and conventions on racial discrimination.

3. Mr. BAYART (Mongolia) said that he would begin by answering the questions raised by Mrs. Sadiq Ali. The question of the number of nationalities had been mentioned by several Committee members since the reports referred to the existence of both 14 and 25 nationalities. He said that the reports drew a distinction between national and ethnic groups, which numbered 25 in total.

4. The Kazakhs constituted the largest group, representing 5.4 per cent of the population, and they spoke their own language, Kazakh. Most of the other nationalities spoke Mongolian, although there were also local dialects. There were around 10 additional, very small ethnic groups. Kazakh children attended primary and secondary school, where they received instruction in Kazakh and also learned Mongolian.

5. With reference to Mrs. Sadiq Ali's second question as to whether Soyombo script was common to all the dialects, he said that Soyombo was a Mongolian alphabet which had been established in the seventeenth century and was still used, particularly in classical literature. It had been abandoned in the 1940s and replaced by the Cyrillic alphabet but Soyombo script, which involved

vertical writing, had recently been reintroduced in schools. An eight-year general education was compulsory throughout the country and he confirmed that all adults were literate.

6. He explained that the alleged systematic expulsion of 6,000 to 7,000 Chinese in May 1983 had not been an arbitrary act. The Mongolian authorities had asked the Chinese nationals involved to accept employment in certain outlying areas where manpower was in short supply but they had refused to do so and had chosen to return home.

7. Mrs. Sadiq Ali had also asked whether foreign nationals, specifically Chinese, were permitted to visit Mongolia and he replied that there were no restrictions on such visits. The previous year, Mongolia had signed a Consular Convention with China and it had been reported in the Mongolian press that a Chinese Consulate-General was to be established in the capital of Inner Mongolia. Mongolia's historic links with China spanned many centuries and the two countries enjoyed excellent relations in all spheres.

8. In response to another question from Mrs. Sadiq Ali who had asked how many Soviet citizens were involved in mining industries he quoted from a decree adopted in 1988 by the Mongolian Council of Ministers. The decree in question regulated the activities of joint enterprises established by Mongolia and other socialist countries on the basis of agreements between their Governments. Such enterprises were managed by a Board on which each participant was equally represented and the articles of the enterprise laid down the Board's decision-making procedures.

9. The tenth report (CERD/C/172/Add.10) contained very detailed information on State enterprises. Mongolia had adopted a bill on State enterprises which introduced the concept of decisions on production, financing and income distribution in large enterprises being taken collectively or by the employees.

10. In reply to Mrs. Sadiq Ali's question as to whether *perestroika* was having any influence on the rural economy, he said that its impact was considerable. Mongolia had adopted a bill on co-operatives which were particularly prevalent in agriculture, a major sector of the national economy. Earlier in the year, an ILO expert had gone to Mongolia to assist in drafting the relevant legislation.

11. With reference to *apartheid*, it was clearly stated in the reports that the Mongolian People's Republic condemned that régime and gave unreserved moral and political support to national liberation movements in southern Africa.

12. Concerning the violation of national and racial equality, he said that the relevant article of the Constitution was not article 30, but article 70. That article stated that propaganda or agitation aimed at inciting racial enmity and direct or indirect limitation of the rights of citizens on grounds of nationality or race were punishable by sentences ranging from three years' imprisonment to banishment.

13. Mrs. Sadiq Ali had referred to the Great People's Khural, i.e. the Parliament, which met for three days a year, and had asked how it could examine all the country's problems in such a short time. He said that that body's working methods would be significantly altered as part of the process of *perestroika* and the changes would be described in the following report.

14. Replying to the question on land, he reminded the Committee that land was owned by the State and there had never been any cases of land appropriation at any time in the country's history. Since Mongolia was extensive and sparsely populated and some of its people were nomadic, no one owned land but everyone had the right to make use of it.

15. In response to the question on religion, he quoted article 86 of the Constitution, which stated that citizens of the Mongolian People's Republic enjoyed freedom of worship and that anti-religious propaganda was prohibted. During one of his visits to Mongolia, the Dalai Lama had received a warm and spontaneous welcome from the people and had said that Buddhism and socialism were obviously not incompatible.

16. The country's legislation guaranteed all citizens the right to work, although some young people chose to be temporarily unemployed, which did not affect the country's economic and social development.

17. As to housing, everyone in Mongolia was housed and the main task was therefore to improve housing conditions. He added that the Commission on Human Rights had adopted a resolution on the right to adequate housing [resolution 1988/24 of 7 March 1988] at the initiative of Mongolia.

18. Referring to the question on literature, he said that there was a language barrier but books by Western authors were available in all bookshops and the works of Balzac and Victor Hugo, for example had been translated into Mongolian. Hence the population had access to Western literature.

19. In reply to Mrs. Sadiq Ali's question on whether there were cases of citizens lodging an appeal against racial discrimination by State bodies, he reminded the Committee that he had said in his introductory statement that the Government condemned racial discrimination and there was no risk of discriminatory measures.

20. He hoped that he had provided satisfactory replies to Mrs. Sadiq Ali's questions but, if there were any outstanding points, he was ready to continue the dialogue.

21. With regard to Mr. Partsch's question on the new version of article 70 of the Penal Code, he said that the article corresponded exactly to the wording of article 53 in the previous version of the Code.

22. He believed that he had already answered Mr. Aboul-Nasr's question on the number of nationalities in his reply to Mrs. Sadiq Ali. He agreed with Mr. Aboul-Nasr that Governments should take a very cautious approach to the question of nationalities.

23. He explained to Mr. Sherifis that the paragraph on the implementation of article 2 in the tenth report which stated that "a variety of legislation has been adopted here prohibiting all forms of racial discrimination" referred to some provisions which had been included in legislation on the prevention and elimination of racial discrimination. Replying to another question from Mr. Sherifis, he said that citizens had the right to freedom of movement within Mongolian territory but there were some practical problems as the Government could not permit everyone to leave the capital simply to live in the countryside or in an area with a more temperate climate.

24. Mr. Sherifis had also asked whether the representatives of national minorities, who made up 25 per cent of members of Parliament, had the right to participate fully in the work of the Executive Branch. The answer was that appointments were based exclusively on individual merit and no account was taken of origin. For example, almost half the staff of the Permanent Mission of Mongolia to the United Nation's Office at Geneva were members of national minorities.

25. The concept of perestroika was interpreted very broadly in Mongolia as covering all areas of economic, social and cultural life. The reform programme was intended to ensure the greatest possible economic independence for co-operatives and collectives, introduce democratic planning and management methods, eliminate bureaucracy and promote intitative. Although he did not have any figures available, he could tell Mr. Song Shuhua that the new legislation on State enterprises and co-operatives had led to steady, overall economic growth as the planned reforms were implemented.

26. Some members of the Committee had expressed concern about the level of education available to children in nomadic tribes. He wished to reassure them that despite Mongolia's vast, sparsely populated territory, the authorities were able to provide eight years of general education for all school-age children.

27. Some Committee members had also asked whether the fact that the Mongolian authorities were not aware of any instances of violation of the Convention might be due to public ignorance of the existence of international human rights instruments. He could also reassure them on that point, although he stressed that the absence of cases of violation of the Convention in the past did not mean that such violations would never occur.

28. Mr. SHAHI observed that there were 25 different national and ethnic groups in Mongolia of variable and sometimes slight numerical size, but those minorities were nevertheless represented in Parliament by 22 per cent of the deputies, which was a large proportion. Did all those minorities each have their own language? He would also welcome an assurance that freedom of worship and expression was indeed acknowledged for all religious groups.

29. Mr. BAYART (Mongolia) said that Mongol was spoken by the vast majority of the population, over 90 per cent, including the ethnic minorities, but those minorities, also freely used their dialect or employed in Mongol some terms which were their own. In religious matters, Lamaism, which was the Mongol religion, had always been treated on an equal footing with all the other religions.

30. Mr. RESHETOV noted that the representative of Mongolia had taken pains to reply to all the questions that had been asked, which was rare enough to merit emphasis. He very much hoped that the next report of Mongolia would give an account of the changes in progress that had been mentioned. He stressed once again that the Committee was in a much better position to understand the situation of a country whose report it was considering when a representative of that country could reply to its questions immediately.

31. The CHAIRMAN said that the Committee had concluded its consideration of the ninth and tenth periodic reports (CERD/C/149/Add.23 and CERD/C/172/Add.10) of Mongolia.

Mr. Bayart (Mongolia) withdrew.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-THIRD SESSION:

(a) ANNUAL REPORT SUBMITTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION;

(b) REPORTING OBLIGATIONS OF STATES PARTIES TO UNITED NATIONS CONVENTIONS ON HUMAN RIGHTS (GENERAL ASSEMBLY RESOLUTION 42/105) (agenda item 2)

32. Mrs. SADIQ ALI (Rapporteur) introduced agenda item 2. With regard first to the report of the Committee on its thirty-sixth session (A/43/18), it had, as was customary, been examined by the Third Committee of the General Assembly, and had given rise to a discussion in which 44 of 83 delegations had participated, most of them rather cursorily (A/C.3/43/SR.4-17 and 23). In introducing the report, the Under-Secretary-General for Human Rights had announced that the number of States parties to the Convention was now 125, which was a record high figure for adherents to an international human rights instrument. On the other hand, only 12 States parties had made the declaration under article 14 of the Convention to recognize the competence of CERD to consider communications from individuals or groups of individuals. Yet, in the Under-Secretary-General's words, Individual recourse to an international authority was the best defence against the possibility of national abuse or ignorance.

33. The Under-Secretary-General had also not failed to point out that for the third consecutive year, the work of the Committee had been impaired by financial difficulties arising from non-payment by several States parties of their assessed contributions under the Convention. As the Secretary-General's report on financing the expenses of the members of the Committee (A/43/607) indicated, the contributions outstanding from States parties as at 1 September 1988 had still totalled over $US 149,000. Since that date, Barbados had paid its contribution for 1988. At the end of its thirty-sixth session, which had had to be curtailed, the Committee had still had 48 reports awaiting consideration, an unprecedented situation. The Under-Secretary-General had therefore invited the Third Committee to look closely at that critical situation and had drawn its attention to CERD decision 1 (XXXVI), in which it was proposed that the Secretary-General be authorized to ensure the financing of the expenses of the members of the Committee from the regular budget of the United Nations.

34. The delegations of different regional groups, before reflecting on the financial crisis with which CERD was having to contend, had often prefaced their observations on that subject by a positive assessment of its activities. That was particularly true of Jamaica, Denmark speaking on behalf of the Nordic countries, Senegal, Poland, Czechoslovakia, India, Iraq, Pakistan, Greece on behalf of the European Economic Community, Canada, the Congo, Ghana, the Bahamas, Nicaragua, China, Bulgaria, Tunisia, Cuba, Cyprus, Brazil and the Libyan Arab Jamahiriya. Praises had even come at times from States that were not parties to the Convention, such as Singapore and Saudi Arabia.

35. Those praises had sometimes also been accompanied by criticisms regarding the inadequacy of the Committee's action so far, and in particular regarding the persistence of discrimination in the world, in its violent as in its more subtle forms, and the necessity of educating the younger generation to respect human rights and fundamental freedoms for all, without discrimination. Comments in that regard had been made by Nicaragua, Austria, the Congo, the Philippines, India, the Bahamas, Costa Rica, Greece on behalf of the 12 members of the European Economic Community, and the Soviet Union.

36. On the solution envisaged by CERD to resolve its financial difficulties (decision 1 (XXXVI)), the Third Committee had been divided. Greece, speaking on behalf of the 12 members of the European Economic Community, had pointed out that with a few unfortunate exceptions, those arrears were very small and should cause no problems to the States concerned. The Twelve would then be ready to work for a solution that enabled CERD to fulfil its mandate. Australia, Austria, Denmark on behalf of the Nordic countries, France, Canada, the Congo, the Libyan Arab Jamahiriya and Venezuela had recalled that the provisions of article 8, paragraph 6 of the Convention were quite clear and argued for the adoption of a solution, temporary or otherwise, that would give CERD the financial resources it needed. Bulgaria, one of whose experts was Vice-Chairman of CERD, had made a point of informing the Third Committee of the concern of the members of CERD and expressed the hope that the General Assembly would approve the draft resolution contained in its decision 1 (XXXVI) or any other solution along the same lines. Bulgaria had been followed by Iraq, the Soviet Union, Egypt, the Byelorussian SSR, China, Cuba, the Bahamas, Jamaica, Trinidad and Tobago, Ghana and Uganda. In addition, seven States (Australia, New Zealand, Nicaragua, Brazil, Bangladesh, Algeria and Hungary) had supported the idea that the Secretary-General should launch an appeal to States parties to pay their arrears. Seven other States, Pakistan, India, Cyprus, Poland, Bangladesh, Philippines and Ethiopia, had appealed directly to the States that had not met their financial obligations to CERD.

37. With regard to the reporting obligations of States parties, Tunisia, Senegal, Trinidad and Tobago, Bulgaria and New Zealand, had said that they approved the measures adopted by CERD on the periodicity of reports and the streamlining of the consideration of periodic reports by States parties. Egypt, Uruguay, the Ukrainian SSR, Austria, France, Denmark, Iraq, Ethiopia, the Libyan Arab Jamahiriya and Algeria had stressed the importance of the obligation of States parties to submit reports and to present those reports when they were due, some of them seeing a correlation between the non-payment of contributions and the non-submission of reports.

38. Uruguay had indicated that it had ratified the Convention as long ago as 1968 and had been the first State party to make the declaration provided for in article 14 of the Convention. Supported by Ecuador, Uruguay had appealed to all States to do the same.

39. Concerning the status of the Convention, the Belgian delegation had submitted a draft resolution, later amended by the Uruguayan delegation, which stressed the necessity of obtaining universal ratification of the Convention and called upon States parties to consider the possibility of making the declaration provided for in article 14 of the Convention. That draft had become General Assembly resolution 43/95.

40. With regard to the report of CERD, the Third Committee had adopted by consensus a draft resolution submitted by the Yugoslav delegation (General Assembly resolution 43/96), of which paragraphs 8, 9 and 10 were devoted to the sessions of CERD and its financial situation. She read out those paragraphs. The Netherlands delegation had regretted that the paragraphs relating to financial problems had not been more explicit, since a distinction needed to be drawn between the failure of a certain number of States parties to the Convention to meet their financial obligations and the special responsibility of the United Nations in the implementation of instruments for the defence of human rights adopted under its auspices. That delegation had put forward the idea that the next meeting of States parties to the Convention might consider suspending voting rights at its meetings for States in financial arrears, and that disputes concerning the application of the Convention might be referred to the International Court of Justice: the United Nations must go beyond expressing regret that certain States were failing to meet their financial obligations and also reflect on possible long-term and short-term solutions. The delegation of Denmark had stressed that the application of human rights instruments was hampered by the financial difficulties and had regretted that no solution had been proposed in the draft resolution. It had considered that the General Assembly could authorize the Secretary-General to assist in financing the Committee's work out of the regular budget of the United Nations until a solution was found.

41. Mr. SHERIFIS observed that the Third Committee had given lengthy consideration to CERD's difficulties without suggesting a solution that would enable it to meet regularly; the spring session had not in fact taken place.

42. He asked the representative of the Secretary-General whether he could assess the present financial situation, since the accounts available stopped at the month of August 1988.

43. Mr. GARVALOV confirmed that the States' representatives to the Third Committee had discussed the situation of CERD at length and that some had made real efforts to find a solution. However, no way out was in sight. In his opinion, the solution was in the hands of the States parties to the Convention. It was obvious that the General Assembly was reluctant to make a clear-cut request that the costs of CERD's sessions should be met, even temporarily, from the regular budget, and all the indications were that such a decision would not be taken.

44. It was important to stress that the delegations present in the Third Committee had weclomed the efforts made by CERD to streamline its work; the new procedure of designating rapporteurs entrusted with preparing the consideration of periodic reports by States parties would not fail to capture their attention at the forty-fourth session of the General Assembly.

45. Mr. YUTZIS noted that the representatives of States were unanimous in stressing the importance of CERD's work and of the Convention and in hoping that a solution could be found, but that all those statements of intent were belied by the facts, since it was clear that the political will to contribute the necessary funds was lacking in a large number of States parties. The financial situation of the Committee had been discussed in all the United Nations human rights bodies, but to no avail. There were three possible ways of financing the Committee's work - payment by States parties of their contributions, recourse to the United Nations regular budget or the use

of contributions from other organizations. As none of those methods of financing was materializing, it was difficult to see how the situation could improve.

46. Replying to a question by Mr. FERRERO COSTA, the CHAIRMAN explained that members were invited to discuss the measures taken by the General Assembly concerning the Committee and to convey any suggestions regarding the financial problems, but that no decision would be taken at the current meeting. The question of States parties reporting obligations would be considered later.

47. The CHAIRMAN, speaking in his personal capacity, said that in his view the only solution would be to have CERD financed from the regular budget of the United Nations. Mr. Garvalov had said that the solution depended on States parties. They had indeed created the problem, but the solution did not lie with them. They could simply say that they would comply with their obligations. At the meeting of Chairpersons of human rights treaty bodies held at Geneva from 10 to 14 October 1988, he had done his utmost to secure agreement to the option of financing from the regular budget. It was known that some States supported that idea, and he referred in particular to a letter from the Minister for Foreign Affairs of the Netherlands to the Secretary-General the text of which had been circulated to the Committee; in that letter it was stated that financing from the regular budget would represent but a light burden, whereas the activities thus financed constituted concrete aspects of the United Nations work. The Nordic countries had expressed similar views. As was known, however, the General Assembly had not adopted a resolution along those lines. The explanation for that was that, since the Third Committee had not transmitted a resolution to that effect to the General Assembly, the latter had made no decision. In fact, the Third Committee had not itself had before it any draft concerning financing from the regular budget, even though the meeting of Chairpersons of human rights treaty bodies had made a recommendation along those lines. That was disappointing, because such a draft would probably have been adopted. Even the countries which did not have the political will to pay their contributions would have been reluctant to stand in the way of what seemed to be the only possible solution.

48. As to the future, the Commission on Human Rights would be taking the question up again at its forty-sixth session. It was also to be hoped that a good draft would be submitted by one or more delegations at the forty-fourth session of the General Assembly. All that was needed was for such a draft to reach the General Assembly for a solution to be finally found. In that case it would no longer be necessary for the members of CERD to go to the extreme of resigning jointly, as Mr. Yutzis had contemplated in 1988.

49. Mr. GARVALOV said that the reason why no draft concerning the financing of CERD from the regular budget had been submitted to the Third Committee of the General Assembly was that for some years the Third Committee had been in the habit of adopting resolutions on the report of CERD by consensus or without a vote. He had himself been in a position to observe that situation in the Third Committee as representative of Bulgaria and Vice-Chairman of CERD. Many delegations had stressed the need for consensus, which had been emphasized even by the traditional sponsors of the draft resolutions on the Committee's report. The consequence, as always when consensus was required, had been to limit the scope for action.

50. The CHAIRMAN objected that the consensus principle should not act as an impediment. When important international legal instruments like the 1969 Vienna Convention on the Law of Treaties had been drafted, consensus had been reached after serious clashes. When the International Convention on the Elimination of All Forms of Racial Discrimination had been formulated, the text of some articles had also given rise to major political difficulties, and there had been tense moments. It had taken some courage to arrive at the final text of the Convention.

51. The recommendation to finance the Committee's activities from the United Nations regular budget came, as he had said, from the meeting of Chairpersons of human rights treaty bodies. Now that that recommendation had been made, it should be possible for the General Assembly to take a favourable decision. If he was in New York at the time when the question was being considered, he would certainly see to it that that was done. He reminded the Committee that the Human Rights Committee no longer had any problems and was no longer in any danger of having its sessions cancelled.

52. Mr. YUTZIS also stressed the fact that many General Assembly resolutions had been adopted with difficulty and that consensus had only been reached after some time. Consensus was not a spontaneous phenomenon; one must be prepared to fight for it. In order to resolve the difficulties preventing CERD from functioning, it was necessary to embark on a political battle, especially as far as the Third Committee was concerned.

53. Mr. FERRERO COSTA agreed with the Chairman that, of the three options described by Mr. Yutzis, financing from the regular budget was the only realistic one. It was not possible to compel States parties to pay their overdue contributions. As a request for the financing of the Committee's work from the regular budget had been addressed to the Secretary-General in 1988, the Committee must now insist on that.

54. A crucial question was which State would take up the challenge of submitting a draft to that effect to the Third Committee for transmittal to the General Assembly. He suggested that the members of CERD should ask the countries of which they were nationals to play that role. It could no longer continue to function on the basis of year-by-year arrangements, but needed permanent arrangements. Like Mr. Yutzis, he wished the Committee strongly to reiterate its request to the Third Committee and the General Assembly.

55. Mr. BESHIR said that he recognized the need for consensus, and that the Committee had to admit that its demands over the past two or three years had not been met. CERD must persevere, however, and do its utmost to win the Third Committee and the General Assembly over to its views. The only solution was financing from the regular budget. The States parties that did not pay their contributions would continue not to do so because they were not sufficiently interested. It would nevertheless be useful to have precise information on the States which did not pay.

56. Mr. HOUSHMAND (Representative of the Secretary-General) said in reply to Mr. Sherifis and Mr. Beshir that, with regard to the payment of contributions, the situation had not improved since 1988. The Under-Secretary-General for Human Rights had informed the Committee (832nd meeting) that the situation

remained uncertain. Information from the Comptroller would be conveyed to the Committee within a few days. Data previously provided by the Comptroller on 11 May 1989 - when the latter had made it known that there were sufficient resources to enable CERD to hold a four-week summer session - had shown assessed unpaid contributions as amounting to $US 184,435.

57. Mr. YUTZIS said that no such situation had been contemplated when the text of the Convention had been drafted. In retrospect, there was no reason to think that a strategy had been devised by some at the time to hamper the implementation of the Convention. Rather, the present situation had arisen out of the financial crisis. In other words, there had been no conscious intention at the beginning to impede the functioning of the Committee.

58. The CHAIRMAN said that at the time of the drafting of the Convention many States had been afraid of the role that an international mechanism on racial discrimination might play. Since then, CERD had allayed those fears and many States had become parties to the Convention on account of the judicious work carried out by the Committee. Paradoxically, when the Convention had been drafted, it had been thought that financing by States parties would be a guarantee of the Committee's independence. No one seemed to have foreseen at the time that States parties would not honour their commitments. However, it should have been borne in mind that, although member States were bound by the Charter of the United Nations to pay their contributions to the United Nations regular budget under pain of sanctions, the same did not apply to contributions paid in respect of treaty bodies, where there were no sanctions.

59. Mr. FERRERO COSTA said that he wondered what political intention there might be behind non-payment of contributions. It could be seen that all but one of the States in arrears were developing States. It would be interesting to know what other contributions from those States were overdue. In any event, the only solution to enable CERD to continue to function was to have its work financed from the regular budget.

60. The CHAIRMAN said that the discussion on item 2 would be resumed on 16 August.

ORGANIZATION OF WORK

61. The CHAIRMAN proposed the establishment of a working group to submit preliminary views on the Committee's functions under article 14 of the Convention. The working group would be composed of Mr. Garvalov, convener, Mr. Aboul-Nasr, Mr. Partsch, Mr. Sherifis and Mr. Yutzis.

It was so decided.

The meeting rose at 6 p.m.

841st meeting

Tuesday, 15 August 1989
at 10.15 a.m.

Chairman: Mr. LAMPTEY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Eighth periodic report of Algeria (CERD/C/158/Add.2)

At the invitation of the Chairman, Mr. Dahmouche and Mrs. Ksentini (Algeria) took places at the Committee table.

1. Mr. DAHMOUCHE (Algeria), introducing the eighth periodic report of Algeria (CERD/C/158/Add.2) assured members of his country's continued commitment to constructive dialogue with the Committee and said that many changes had occurred in his country during the period under review, in particular with regard to human rights and fundamental freedoms.

2. In preparing its report, his Government had closely followed the guidelines adopted by the Committee. Part I contained an outline of Algeria's policy at the national and international levels with regard to the campaign against racial discrimination. Part II gave an account of the legislative and other measures taken to enhance the implementation of the Convention. A new Constitution had been adopted in February 1989, providing, inter alia, for a multi-party system. Some of the human rights and fundamental freedoms guaranteed under the Constitution included inviolability of the human person, equality of citizens, freedom of movement, and the right to own property, to strike and to establish political associations. The Constitution also provided for separation of the legislative, executive and judiciary branches of government. A Constitutional Council had been set up to ensure respect for the Constitution and the proper conduct of electoral consultations and to rule on the constitutionality of treaties, laws and regulations. Algeria had therefore embarked on a process of reform aimed at achieving the further democratization of the country's economic, social, cultural and political life, while consolidating the state of law and the fundamental benefits of the Revolution.

3. Lastly, he drew attention to various laws enacted by the National People's Assembly concerning, inter alia, political meetings, the abolition of the State security court, and the ratification of the International Covenant on Economic, Social and Cultural Rights, of the International Covenant on Civil and Political Rights and Optional Protocol, and of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

4. Mrs. KSENTINI (Algeria) said that the authors of the eighth report had tried to take account of all the points discussed during the consideration of the seventh report (CERD/C/131/Add.3) and had avoided repeating information provided in earlier reports.

5. She drew attention to the fact that population statistics were contained in an annex to the eighth report, which was available from the Secretariat. The report reviewed developments in national legislation to demonstrate how Algeria was implementing the various provisions of the Convention.

6. In response to requests by members of the Committee, her Government stressed the country's international activities aimed at combating racial discrimination and *apartheid*. During the consideration of previous reports, some members had said that information in that sector was insufficient and the current report therefore attempted to fill any gaps in that regard.

7. She drew attention to the support which her country continued to give to the legitimate struggle of the Namibian people for the realization of their right to self-determination and independence. Algeria had always condemned the policy of *apartheid*, which it considered to be a crime against mankind and stressed that only the application of mandatory general sanctions could put an end to it.

8. *Mr. BANTON*, speaking as rapporteur entrusted with the preliminary examination of the eighth periodic report of Algeria (CERD/C/158/Add.2) said he appreciated that the report followed the Committee's guidelines (CERD/C/70/Rev.1) more closely than had been the case with the seventh report (CERD/C/131/Add.3). He thanked the Government of Algeria for the information provided concerning the extensive action taken to implement article 3 in respect of *apartheid*.

9. Previously, members had observed that they could not assess the treatment of ethnic minorities in the absence of basic demographic information. He had examined the annex containing statistical information but thought that the difficulties experienced by the Committee still remained. In reply to the question concerning the composition of the population, the representative of Algeria had said that it was not relevant, a statement which displayed a misconception. It was for the Committee to interpret the Convention and to determine what was relevant in the discharge of its obligations. The Committee should therefore request further information concerning regional languages used in primary schools.

10. Members of the Committee had asked how the concept of discrimination based on race was interpreted. That remained unclear. Noting that one of the objectives of the Convention was to prevent action based on race, colour, descent, or national or ethnic origin, he asked whether all those grounds were covered by Algerian legislation and where they were specified.

11. The eighth report supplied information about rights but not about the extent to which they were enjoyed in practice. For example, during the discussion of the seventh report, a question had been asked about foreign workers and whether they had encountered discrimination. That appeared not to have been answered. The Committee had also asked whether the Criminal Code contained sanctions for discrimination in the denial of housing and employment. If someone believed that he had suffered such discrimination, to what office or tribunal did he go? He would also like to know what proportion of people with such grievances took formal action to have their complaints adjudicated.

12. During the same discussion, the Algerian representative had been asked whether the Government would make the declaration provided for under article 14 and she had given a negative reply. He therefore asked the Government of Algeria to examine the text of the declarations made by other States parties recognizing the competence of the Committee under article 14, because it might possibly be able to deal with the problem by means of the kind of declaration made by certain other States parties.

13. Mr. BESHIR noted that Algeria was undergoing a process of reform and democratization and that it was no longer a one-party State. He would welcome information on the number of political associations that had been formed. He would also be grateful for further information on the implementation of the right of association. Lastly, he took note of the information given in paragraphs 100 to 104 of the eighth report on the right to freedom of thought, conscience, religion and opinion.

14. Mrs. SADIQ ALI said that it would have been preferable for the statistical annex to be appended to the report itself. The breakdown given in the report did not provide sufficient information about ethnic groups and minorities.

15. The Government had said that it recognized the right to establish political associations. She requested some clarification, since, in the past, Algeria had not recognized the Berbers as a separate group. A political group known as the Berber Assembly for Culture and Democracy had been established and she would like to know whether it had been recognized by the Government.

16. With regard to articles 5 (e) (i) and (iv), she noted that 3,300 people had been arrested during the rioting in October 1988 and that torture was said to have been used. The students had been protesting against declining standards and poor employment prospects. She would like to know the situation of the people who had been arrested and tortured and whether they had been released.

17. Mr. PARTSCH noted that the statistical annex to the eighth report (CERD/C/158/Add.2) contained detailed information on marriages and other matters which were not of concern to the Committee.

18. With regard to paragraph 66 of the report, he said he would be interested to know how the Penal Code was interpreted for the purpose of determining whether cases involved racial discrimination.

19. With reference to paragraph 85, he asked why persons who engaged in profitable activities were excluded from political rights.

20. Members had been told about the right of freedom of movement but no mention had been made of whether a citizen who had left the country was allowed to return.

21. Referring to the question of the Berbers, he noted that most social rights were guaranteed only to citizens and not to other persons. He would welcome additional information indicating that foreign workers enjoyed social rights in practice even if they were not guaranteed to them.

22. Mr. SHERIFIS, referring to paragraph 3 of the eighth report (CERD/C/158/Add.2), said that Algeria's faith in human dignity and its commitment to just causes were well known to all members and that its policy had been manifested on many occasions and in many international bodies.

23. With regard to article 3 of the Convention, he believed that Algeria had an impeccable record in implementing its obligations under that provision.

24. With respect to article 5 (d) (i) on the right to freedom of movement, while he recognized that it was fully exercised by any Algerian citizen, he had the impression that there was some limitation on its exercise by foreigners, presumably for reasons of security.

25. Mr. ABOUL-NASR said that countries which did not require information on ethnic origin for census purposes had difficulty in providing statistics on the composition of their population. However, such information was very valuable to the Committee and he hoped that approximate figures could be supplied if precise data were unavailable.

26. Mr. DAHMOUCHE (Algeria) said in response to the questions raised, that the Government was reluctant to classify its population by ethnic origin. Algeria was an ancient civilization whose people had been united for many centuries. Colonialist attempts to divide the country into Berber and Arabic speakers had been totally ineffective, since the vast majority of Algerians were familiar with both languages and the distinction was of purely academic interest. He considered the concept of race to be ill-defined and potentially dangerous, as was shown by Nazi ideology. Like all developing countries, Algeria was striving to overcome immense problems and the Government had no intention of taking any step which might threaten national unity. Consequently, it did not intend to provide statistics on the ethnic origins of the Algerian people.

27. Referring to the questions on the status of foreign workers in Algeria, he said that the country's high unemployment rate meant that there was no influx of immigrants seeking work. All foreign workers in Algeria had a contract with either a private company or the State prior to arrival. Their employer was responsible for providing accommodation and for solving any problems which might arise as a result of Algeria's acute housing shortage. Foreign workers usually received much higher salaries than Algerians and Algeria extended all social benefits, including medical care, to such workers.

28. The formation of political associations had become legal in February 1989 and a plethora of such associations had been established in recent months. Those associations covered the entire political spectrum and their number was constantly increasing.

29. The question on the rights of the Berbers was irrelevant, since all Algerians enjoyed equal rights in law and in practice.

30. Referring to the question on the practice of torture in Algeria, with all due respect to the Committee, it was not, in his view, the appropriate forum to discuss that problem.

31. All those leaving Algeria were given money by the Government on departure, so that they did not become a drain on the resources of other States. Owing to the country's financial problems, that policy had restricted the freedom to leave Algeria in the past. He was glad to say that all restrictions had now been lifted and departure was conditional only on possession of a passport, as in virtually every country in the world. Foreigners were quite free to enter and leave Algeria.

32. He had not fully understood Mr. Partsch's question on paragraph 85 of the report. While some industries had been nationalized, Algeria had always retained a private sector and small businessmen now received financial incentives from the States. The income of the self-employed was regarded as a salary and, so far as he was aware, article 38 of the Constitution did not give rise to any problems.

33. Mrs. KSENTINI (Algeria) thanked all members of the Committee for their interest in Algeria's eighth report and expressed special thanks to Mr. Sherifis for his kind words.

34. Mr. Banton had requested information on the Algerian interpretation of the concept of racial discrimination. Article 28 of the Algerian Constitution prohibited discrimination on the grounds of birth, race, sex, opinion or any other individual or social condition or circumstance and she considered that definition to be even more comprehensive than the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

35. She thought that there had been a misunderstanding with regard to paragraph 38 of the report. The words "specific measures" referred to measures other than legislation, as the principle of non-discrimination was explicitly stated in all Algerian legislation.

36. Racist practices were alien to Algerian society and no complaints of racial discrimination had ever been brought before the courts. All international instruments which had been duly ratified by Algeria had superior authority to domestic law. Under article 123 of the Constitution, any laws or regulations which conflicted with such instruments became null and void. All new legislation was examined by the Constitutional Council to ensure its conformity with the Constitution and relevant international instruments.

37. In response to Mr. Banton's question on the existence of sanctions for discrimination in employment or the allocation of housing, the answer was to be found in paragraphs 123 to 127 of the report. Citizens who felt that they had been the victims of discrimination had the right to appeal to the courts, invoking the International Convention on the Elimination of All Forms of Racial Discrimination. No such appeals had been lodged to date. She added that the limited housing available was allocated on the basis of a non-discriminatory quota system by special commissions made up of elected representatives of the local community.

38. She denied that Algeria was reluctant to recognize the competence of the Committee under article 14 of the Convention but said that the Government was currently undertaking a detailed review of its position on all international instruments. Algeria had recently signed the Optional Protocol to the International Covenant on Civil and Political Rights and had recognized the competence of the Committee against Torture. In her view, it was highly probable that Algeria would recognize the competence of the Committee on the Elimination of Racial Discrimination under article 14 of the Convention in the course of the following year.

39. An Act passed on 5 July 1989 prohibited the establishment of any political association based on principles of intolerance, fanaticism, violence or discrimination. If racist elements were subsequently incorporated into an association's ideology, it would be dissolved.

40. Referring to paragraph 66 of the report, she said that as no case of racial discrimination had been brought before the courts, the Algerian definition of such discrimination was not based on judicial precedent. Its interpretation was the result of consultations between the Ministry of Foreign Affairs and the Ministry of Justice.

41. With regard to the meaning of paragraph 85 of the report, article 38 of the Constitution was not discriminatory but was intended to ensure equal opportunities for access to the civil service and to restrict the influence of affluent sections of society, i.e., to prevent social discrimination.

42. Citizens of Algeria were quite free to return to the country after long periods of residence abroad.

43. The International Covenant on Economic, Social and Cultural Rights imposed no obligation on developing countries to grant foreigners resident in their territory the same social rights as their own citizens. However, Algeria was one of the few countries to extend all social rights to foreigners. Restrictions on the freedom of movement of foreigners applied only to some military zones, to which access was restricted in almost every country in the world.

44. Mr. PARTSCH thanked Mrs. Ksentini for her reply to his question on paragraph 85 of the eighth report but said that the wording of the paragraph was not at all clear and gave the impression that a fruit seller, for instance, would be ineligible for any responsibilities within the State.

45. Mr. GARVALOV said he was satisfied that any organization or association in Algeria propounding racist ideologies or policies would be outlawed or prohibited.

46. He could accept the explanations and the statements in the eighth report of Algeria concerning the demographic composition of the country, just as he had accepted grounds of national unity and other reasons for the omission of specific demographic data from the reports of other countries in the past. While he agreed that more information should have been provided on the implementation of article 4, the report was commendably comprehensive, had been drafted in accordance with the guidelines and took account of the concerns expressed by the Committee during its consideration of the seventh report (CERD/C/131/Add.3). Algeria could be seen to be applying the Convention, and he agreed with Mr. Sherifis that its implementation of article 3 was exemplary.

47. Mr. SHAHI expressed his appreciation of the eighth report (CERD/C/158/Add.2) and the explanations given and said he looked forward to further enlightenment in the next report on how the previous year's developments had affected the structure of government, the political system and society in Algeria, since there appeared to be a desire among the Algerian people for further exploration of the country's new political frontiers.

48. Like Mr. Beshir, he was satisfied with Algeria's legal provisions concerning freedom of thought, conscience, religion and opinion. The fact that Islam was the State religion dispelled any misunderstanding about the possible incompatibility of certain recent events with freedom of belief and expression. No State should tolerate insults to religion. Such matters lay outside the purview of international law, and exercise of the right to freedom of expression was naturally limited by the corresponding right of others.

49. He had been inclined to accept paragraph 85 of the eighth report as it stood, since his initial interpretation of the paragraph had confirmed his view that government servants should not engage in any other, profit-making activity which might be conducive to corruption and neglect of duty, but had been most interested to hear that the reason for the Government's enactment of such measures was to ensure equality of access.

50. On the subject of demographic data, the fact that a number of States were highly sensitive about providing such information while others did so more willingly, and that the Committee found it difficult to assess the implementation of the Convention in the absence of demographic data, raised an issue that called for discussion among the Committee members themselves.

51. Mr. YUTZIS said that the eighth report (CERD/C/158/Add.2), which followed the guidelines (CERD/C/70/Rev.1), had led to a constructive dialogue between the representatives of Algeria and the Committee and had helped to clarify certain issues. While he appreciated some countries' difficulties in supplying demographic information to the Committee, the purpose of the Committee's request for such information was to enable it to assess the make-up of the population and thus ascertain how certain articles of the Convention were applied in practice. Although he himself had some misgivings about definitions of race, since, in his view, there was but one, human race, minorities did exist, and he would be grateful for additional information in that regard.

52. He drew attention to the Government's awareness of the Committee's critical financial situation and the consistent support for the Committee expressed by the delegation of Algeria in various United Nations bodies. He was particularly gratified to hear the oral assurance given by the representative of Algeria of the possibility of his country making the declaration under article 14 of the Convention. That would open the door to an expansion of the Committee's work and its more effective assessment of the implementation of the Convention.

53. Mr. RESHETOV said that he did not entirely agree with the request by some Committee members for figures showing the ethnic breakdown of the population. The question of minorities or ethnic groups was very complex and was of relevance to his own country, where "nationalities" or ethnic groups numbered between 100 and 180. In the Soviet Union, a person's membership of a particular nationality had originally been based on that of the mother and subsequently on that of the father, but it was now widely agreed that an individual should be classified as belonging to the group to which he or she wished to belong. More broadly speaking, an ethnic group or minority could be said to exist if that group itself believed it possessed a community of interests or traditions that distinguished it from the majority in a given area. If the representatives of a country did not deem it necessary to single out a minority in relation to the population as a whole, then the Committee

would be misguided in demanding that the authorities of that country should erect artificial barriers and quote statistics that did not reflect the views of the population itself.

54. Mrs. KSENTINI (Algeria) said that, in reply to the further comments about paragraph 85 of the eighth report, she could but reaffirm that article 38 of the Constitution should be interpreted as being intended to prevent discrimination. In the example given by Mr. Partsch, a fruit vendor would not be regarded as engaging in a profitable activity, but as working for a living. In any case, article 38 had been repealed and replaced by a new. article 48 guaranteeing equal access by all citizens to responsibilities within the State "subject to no conditions other than those laid down by law".

55. She wished it to be quite clear to the Committee that even if the Algerian authorities wished to provide the demographic information requested by the Committee, they would not be in a position to do so, since no such information existed other than that based on the parameters given in the reports. Demographic data were collected in response to specific needs, and she agreed with Mr. Reshetov that Governments should not be compelled to erect barriers where they did not exist. In conclusion, she said that there had been some recent developments in her country which had not been fully covered by the reports under consideration or the current discussion, but assured the Committee that they would be included in the ninth report.

56. Mrs. SADIQ ALI asked whether there was some regional division of the country for planning purposes and, if so, on what basis it was effected. Some areas, for instance, might be more backward than others and require greater attention.

57. Mr. DAHMOUCHE (Algeria) said that, like all countries, Algeria had administrative divisions and that, despite efforts to achieve the greatest possible balance in terms of population and prosperity, some areas were inevitably more disadvantaged than others. Special programmes to meet the specific needs of those areas, for instance in health and education, had been developed at a very early stage over and above national planning arrangements. Such data had a bearing on the demographic breakdown of the population in quantitative terms, but were not related to the kind of information requested by the Committee.

58. The CHAIRMAN thanked the representatives of Algeria for their participation and the Algerian Government for its co-operation and looked forward to the ninth periodic report of Algeria. He stated that the Committee had concluded its consideration of the eighth report of Algeria (CERD/C/158/Add.2).

Mr. Dahmouche and Mrs. Ksentini (Algeria) withdrew.

Third and fourth periodic reports of Colombia (CERD/C/143/Add.1 and CERD/C/166/Add.1)

At the invitation of the Chairman, Mr. Rivas Posada (Colombia) took a place at the Committee table.

59. Mr. RIVAS POSADA (Colombia) said that part I of the third report (CERD/C/143/Add.1) described in detail Colombia's indigenous policy since independence. The first, or "liquidationist" period had been marked by the endeavour to abolish indigenous reservations and indigenous cabildos. During the second, or "reductionist" period, an attempt had been made to integrate the indigenous peoples and replace the old institutions with new ones, while displaying some tolerance towards the cabildos and reservations. That had been done through new national laws and by handing over the education of the indigenous peoples to the Catholic missions. The third period, from 1958 to 1982, had been based on Act No. 81 of 1958 which replaced the concept of assimilation by that of the development of the indigenous communities, and had been strongly influenced by the Latin American indigenous movement. In terms of land rights, funding for projects for the development of the indigenous population and the establishment of indigenous institutions, that period paved the way for the latest period, that of "indigenous self-administration" characterized by the active participation of indigenous communities in decision-making on measures affecting their own economic and social development and by respect for their own cultural institutions and traditional organizations. In February 1982 the First National Indigenous Congress had been held and the National Indigenous Organization of Colombia (ONIC) had been set up, with which the Government had been promoting programmes on land, health, education, economic development and the protection of natural resources.

60. After explaining the present land policy of the Government of Colombia, as described in paragraphs 42 and 43 of the third report, he referred to the figures on page 18 of the fourth report (CERD/C/166/Add.1), which showed that, in 1988, there had been 67 reservations or protected areas of colonial or ancient origin, with a population of approximately 150,000 indigenous people, and 177 new protected areas, established by the Colombian Institute of Agrarian Reform (INCORA), with a population of about 158,000 indigenous people, whereas there had been only 27 reserves with a population of 15,000 indigenous inhabitants out of a total indigenous population estimated at around 450,000.

61. With regard to health and education, the Colombian State was developing programmes intended to stimulate the development of the indigenous groups, having regard to their particular characteristics. Decree No. 1142 of 1978 laid down specific guidelines for educational programmes adapted to the conditions of the indigenous people, ensuring the respect and promotion of their economic, natural, cultural and social heritage, their artistic values, their means of expression and their religious beliefs. Under the legislation in force, the education of indigenous communities was oriented towards the recognition and recovery of their particular cultural values and the encouragement of their capacity to make decisions about their cultural resources, so that they themselves could become responsible for designing, executing and evaluating educational programmes, with the advice and supervision of the Ministry of Education. Over the years, research had been intensified into the cultural and social heritage of the 80 ethnic groups in Colombia. They included some 300 indigenous groupings, most of whom spoke their ancestral dialects and kept up their traditions, social and economic forms of organization, attachment to their place of origin, and cultural identity.

62. The third periodic report had clearly shown that Colombia had no national or local policies, legislation or regulatory provisions tending to create or perpetuate racial discrimination, as referred to in article 2 of the Convention. In addition, the provisions in force, both constitutional and legislative, guaranteed full enjoyment of the rights of all citizens without any discrimination, whatever their racial or ethnic group. The recognized means of appealing against any provisions violating constitutional guarantees were in operation, prominent among them the system for review of the constitutionality of laws by the Supreme Court of Justice, which recognized the rights of all citizens, native or naturalized, whatever their racial origin, to challenge any legal provision that infringed the Constitution. All inhabitants of the Republic, without distinction of race, sex, religion or political belief, had recourse to the means of appeal granted by law to defend their rights.

63. Colombia's fourth periodic report had referred more specifically to the legal and administrative measures and policies formulated and developed by the present Government. Among those were Act No. 30 of 1988, a revision of the Fundamental Act on Agrarian Reform of 1961, aimed at increasing the efficiency of the transfer of title deeds to the peasants, at protecting the interests of smallholders and at defending the institution of the indigenous reservation against those wishing to take advantage of the difficult social and economic circumstances of indigenous peoples. Apart from legislative measures, many programmes were being carried out on behalf of indigenous communities, both relating to public works and to promotion of their social and economic development, in order to increase their participation in collective life with due regard for their native traditions and values.

64. Like all Latin American countries, Colombia was the product of the mixture and contributions of different racial and cultural groups. In addition to the indigenous groups already mentioned, ethnic groups of African origin had made a valuable contribution to Colombian development. Since the total abolition of slavery in Colombia in 1851, the members of the black race enjoyed full citizenship without distinction as to rights and obligations. Both those who had kept to themselves and those who had mixed with other racial groups were actively participating in the national life on an equal footing.

65. That equality also extended to immigrants from diverse racial groups who had arrived in Colombia at different periods. Although Colombia, with a population base of indigenous, Spanish and African peoples, had not been a prime example of a country of immigrants, its social and legal organization had always guaranteed racial equality and the treatment of all elements of the population without discrimination. Colombia had supported the cause of racial equality in all international forums and had embodied such equality in its internal legislation as one of the most precious conquests in the struggle for the protection of human rights.

66. Mr. FERRERO COSTA, speaking as rapporteur entrusted with the preliminary examination of the third (CERD/C/143/Add.1) and fourth (CERD/C/166/Add.1) periodic reports of Colombia, congratulated the Government of Colombia on the regularity with which it submitted reports containing wide-ranging information and on its observance of the Committee's guidelines. He would begin by making two general comments and then considering specific aspects of both reports under articles 2 to 7 of the Convention.

67. His first general comment concerned paragraph 2 of the fourth report, which stated that there was no racial discrimination in Colombia and that no acts affecting the racial minorities living in Colombia were practised. That view was not subscribed to by the Committee, which had disagreed with similar assertions made by other countries and by Colombia in its second report (CERD/C/112/Add.1). Replying to questions on that report, the representative of Colombia had said he interpreted the statement that racial discrimination did not exist in his country "as applying to racial discrimination sanctioned by legal instruments". He had admitted that Colombia had made mistakes with regard to the indigenous populations but was trying to advance toward "equity and historical reparation". 5/ Similar admissions were made in the third report.

68. In the light of such statements, there were no grounds for reasserting that no racial discrimination existed in Colombia and he hoped that a similar assertion would not be made in Colombia's fifth report. Moreover, under article 9 of the Convention, States parties did not undertake to proclaim the non-existence of racial discrimination on their territories, but to inform the Committee of the measures which they had adopted and which gave effect to the provisions of the Convention, as Colombia had done in the second part of its third and fourth reports.

69. His second general comment was that the list of international human rights instruments to which Colombia was a party, given at the end of part I of the fourth periodic report, demonstrated the scope of Colombian participation in human rights instruments and the importance Colombia accorded to the principles they proclaimed. In that context he asked whether the Government of Colombia was contemplating the possibility of making the declaration referred to in article 14 of the Convention, as 12 other States had done, including four Latin American countries.

70. Turning to specific matters under articles 2-7 of the Convention, he thanked the Government of Colombia for the detailed information it had given in its fourth report on indigenous communities and asked what progress had been made with respect to the Colombian Constitutional Reform Bill, which contained a section prohibiting the advocacy of national, racial or religious hatred involving incitement to violence or any other illegal action against any person or group of persons on any grounds whatsoever, including those of race, colour, religion, language, or national or religious origin (CERD/C/166/Add.1, paras. 18 and 36).

71. He congratulated Colombia on the detailed study in paragraphs 24 to 39 of its third report of the National Programme for the Development of the Indigenous Populations (PRODEIN), which promoted a global strategy to attain the well-being of indigenous Colombians. Since, however, there was no mention of PRODEIN in the fourth report, he would like to know, first, what was the policy of the present Government towards PRODEIN, and secondly, what major progress had been made in PRODEIN since 1986. For example, in paragraph 92 of the third report it was stated that the indigenous inhabitants of the Andean region had recovered approximately 50,000 hectares formerly belonging to old reservations; how many more hectares had been recovered up to the present time? He would like to know, thirdly, whether the General Development Plan mentioned in paragraph 22 of the third report was in effect at the present time or did the present Government have another national development programme, as suggested by the reference in paragraph 10 of the fourth report

to the present administration's Development Plan? How did the present development plan affect the indigenous populations and what changes had been made in PRODEIN? Finally, according to paragraph 96 of the third report, "one criterion central to the State's current indigenist policy is that State action should be designed to ensure that each indigenous inhabitant will be in a position, as soon as possible, to take on the responsibility for handling all of his own affairs". There would seem to be a contradiction between some of the aims of the recent indigenist policy in Colombia and the economic and financial realities of the State, which did not have adequate resources to apply that policy. If State policy was directed at making the indigenous inhabitant responsible for his own affairs, how and with what resources could the indigenous population surmount its present difficult situation, also referred to in that paragraph?

72. On the other hand, paragraphs 11 to 14 of the fourth report referred to three fundamental plans by the Government to face the serious economic situation affecting the Colombian population, each of which aimed at meeting the needs of different regional and social groups. In that connection he asked for further information on the scope and content of the Plan for the Elimination of Absolute Poverty and the Comprehensive Rural Development Plan, showing how far both plans envisaged specific measures for the indigenous population and other important minority groups, such as the ethnic blacks, who represented 8 per cent of the population according to Colombia's initial report (CERD/C/85/Add.2).

73. In connection with article 2, reference was also made in the fourth report to land tenure and agrarian reform. He asked what changes had been introduced in the new legislation and specifically what aspects of that legislation were more favourable to the indigenous inhabitants, especially in regard to reservations and other possible forms of rural property. Paragraph 44 of the fourth report called for "rethinking the design of the social land reform and the agrarian legislation in force" and paragraph 46 presented the concept of "social economy" as "a guideline for the present Government's development policy", referring to land reform as a means of prompting improvements in the living conditions of the poorest Colombians. How did the new guidelines for agrarian reform have a favourable impact and how were they applied?

74. Under article 4, the fourth report referred in paragraph 69 to the need to protect the fragile ecosystems of woodland and forest areas and stated that, in the opinion of the Government of Colombia, there was no better way of attaining that objective than by "entrusting the care of the forest to the experienced indigenous inhabitants who have peopled it for thousands of years". What specific measures was the Government of Colombia providing to attain that objective and to recognize those rights of the indigenous population?

75. With regard to article 3 of the Convention, he noted with satisfaction that Colombia had no diplomatic relations with South Africa, but asked whether

it maintained consular and trade relations with that country. If trade relations did exist, what was their magnitude and were they increasing or decreasing?

76. With reference to article 4 of the Convention, he noted that Colombia had not adopted the measures referred to under article 4 (a). The proposal mentioned in paragraph 18 (b) of the fourth report in connection with constitutional reform was a step in that direction, although it was not enough. The Committee's position on Colombia's initial report had to be reiterated: Colombia should consider modifying its code of criminal procedure so as to implement article 4, paragraphs (a) and (b), of the Convention.

77. With reference to article 4, he also recalled that, during the consideration of Colombia's second report, the Colombian representative had said he did not believe that the enactment of laws restricting the broadcasting of information would be well received in his country. 6/ He had added that the general system of Colombian law provided for the punishment of theories justifying crime and incitement to crime - and that, in his view, that was probably sufficient - though no precise regulations implementing article 4 existed. 7/ As already stated, Colombia should consider enacting legislation in conformity with article 4.

78. With regard to article 5 of the Convention, Colombia's earlier reports showed that Colombian legislation covered the provision of the various political, civil, social, economic and cultural human rights referred to in article 5 for the whole population; consequently, the fourth report mentioned only a few supplementary provisions under that article. Nevertheless, information was needed on the extent to which all citizens had the possibility of enjoying those rights in practice. In that connection, he wished to repeat the request made by the Committee when considering Colombia's initial report that more information should be provided on the enjoyment of political and cultural rights by the indigenous peoples and other minority ethnic groups, with comparative figures for different groups regarding education, per capita income, housing, medical care and representation. He also requested a breakdown between the indigenous populations and the black ethnic groups on the effective exercise of those rights.

79. The fourth report drew attention to the popular election of mayors in 1988 for the first time in the country's history, which was a welcome advance in democracy. But how many of the 45,000 indigenous and black inhabitants had participated and how many of them were among the 3,526 candidates and 1,009 new mayors?

80. Under article 6, he drew attention to the entry into force in 1987 of a new Code of Criminal Procedure and the creation of institutions to watch over the defence of human rights in Colombia. He asked whether the Office of the Attorney-General could bring proceedings for racial discrimination, whether the Public Defence Service referred to in paragraph 90 of the fourth report would automatically provide a defence counsel for those requesting such assistance, even if they had no financial resources, and how many local offices had been created since the Service had been established. He also

asked how the function of the Presidential Adviser mentioned in paragraphs 15 to 17 of the fourth report was linked to the judicial and executive authority. Would the Advisory Office assume the prosecution and defence of cases of racial discrimination? Finally, under article 6, he requested information on the functioning of the special office for indigenous affairs mentioned in paragraph 313 of the third report.

81. With regard to article 7, the information in the third report on the implementation of the article seemed to be meagre and he asked if it could be amplified.

The meeting rose at 1 p.m.

842nd meeting

Tuesday, 15 August 1989
at 3.10 p.m.

Chairman: Mr. LAMPTEY

later: Mr. YUTZIS
Mr. GARVALOV

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Third and fourth periodic reports of Colombia (CERD/C/143/Add.1 and CERD/C/166/Add.1) (concluded)

At the invitation of the Chairman, Mr. Rivas Posada (Colombia) resumed his place at the Committee table.

1. Mr. FERRERO COSTA, speaking as rapporteur entrusted with the preliminary examination of the third (CERD/C/143/Add.1) and fourth (CERD/C/166/Add.1) reports of Colombia, said he would continue the series of comments on those reports that he had begun at the previous meeting. First, he wished to draw attention to the serious problems caused by political violence and drug trafficking in Colombia. Those problems, which were not peculiar to Colombia, but also affected other countries in the Andean region, such as Peru, could jeopardize the implementation of policies for the elimination of racial discrimination.

2. In that connection, the fourth report (para. 8) of Colombia mentioned the emergence of delinquency and of groups taking the law into their own hands, but stressed that the new Government's programmes of economic and social reform and its strategies for extending democracy were not affected. Unfortunately, he could not share that view: as he saw it, the country's democratic system, its development programmes, and its policies for the elimination of racial discrimination were in fact seriously affected. It was not a matter of making accusations against the Government of Colombia, but rather of understanding its difficult situation, and of assessing how far it was in a position to give effect to the Convention.

3. In support of his argument, he referred to the report of 6 February 1989 on the visit to Colombia made by two members of the Working Group on Enforced or Involuntary Disappearances from 24 October to 2 November 1988, submitted to the Commission on Human Rights at its forty-fifth session. 8/ In particular, he quoted from paragraphs 8, 11, 12, 13 and 15 of the report, concerning political violence in Colombia; paragraph 16, concerning the maintenance of the legal order; and paragraphs 17, 19, 20 and 21, concerning judges and the judiciary. He also referred, in connection with guerrilla activities, to the statements by the Government of Colombia reflected in paragraph 105 of the document. It was clear from the sections of the report to which he had referred that terrorism and drug trafficking in Colombia were seriously affecting the policies formulated and applied by the Government to give effect to the provisions of the Convention. It would therefore be desirable for the Government to provide some comments and explanations on the matter. It was simply a matter of understanding that situation, in order to be able to consider the third and fourth periodic reports of Colombia in a relevant fashion.

4. In conclusion, he considered that Colombia respected the Convention, and was applying it in so far as it was in a position to do so. It submitted regular reports, provided a wealth of information, and showed a great willingness to engage in dialogue, and for that it was to be congratulated. However, the reports of Colombia did, as he had indicated, give rise to certain questions. He realized that not all those questions could be answered immediately: for some, a written reply could be sent at a later stage, within the framework of the dialogue already established. The measures taken by Colombia to ensure application of the provisions of the Convention should be seen in the difficult context of the serious problems caused by the subversion and drug trafficking to which he had referred.

5. The CHAIRMAN asked if any other members of the Committee wished to raise questions on the periodic reports of Colombia.

6. Mr. PARTSCH noted that paragraph 36 of the fourth periodic report (CERD/C/166/Add.1) referred to a Constitutional Reform Bill now under study, which aimed to prohibit the advocacy of national, racial or religious hatred or any other illegal action against any person or group of persons on any grounds whatsoever, including those of race, colour, religion, language or national or regional origin. It was claimed that the bill would protect the interests of indigenous communities. However, such a bill would need to be supplemented by amendments to the Penal Code providing specific penalties for such offences. Accordingly, he would like to know whether the new bill was to be accompanied by a reform of the Penal Code.

7. The initial report of Colombia (CERD/C/85/Add.2) indicated that indigenous populations were able to vote in local elections. He would like to know whether indigenous persons who spoke only dialects could also vote without having to take an examination in Spanish. As was known, certain Latin American States had abolished that kind of examination. He also wondered whether the manuals mentioned in paragraph 40 of the fourth periodic report were published in the mother tongues of the indigenous peoples as well as in Spanish.

8. Mr. SONG Shuhua said the reports of Colombia gave a frank account of the difficulties the country was encountering in applying its policies for the benefit of indigenous populations. However, he would like to have more details on how those policies were affected by the shortage of resources. In paragraph 33 of the fourth report (CERD/C/166/Add.1) it was stated that the indigenous population numbered 448,710 persons, divided into some 300 groupings belonging to 80 or so culturally different ethnic groups. Given such a degree of dispersion, it would be interesting to know how measures designed to allow them some kind of autonomy could be applied.

9. The Colombian Government, like many Governments which had to deal with indigenous populations, was making efforts to develop productive activities for such populations, activities which would integrate them into the development of the country as a whole while at the same time enabling them to retain their ethnic identity. In Colombia, the efforts being made in that area were described in paragraphs 69-73 of the third periodic report (CERD/C/143/Add.1). He would welcome further details of any projects being developed by the Government to provide indigenous persons with professional qualifications. What was being done to help indigenous children to gain access to secondary education, and in particular, was there any scholarship

programme? If so, he would be glad if the Committee could be given some statistics. Governments had a duty to apply policies designed to eliminate the socio-economic differences between different population groups in their respective countries, and he would like to have more information on the results of such policies in Colombia.

10. Mr. RHENAN SEGURA stressed that a very difficult political situation existed in Colombia, owing to the anti-guerrilla campaign and the trafficking in drugs, notably cocaine derivatives. Mr. Ferrero Costa had highlighted the problems posed by that situation. However, despite those difficulties, the Government was keeping up a fruitful dialogue with the Committee and with other bodies concerned with the protection of human rights, and on that account it deserved to be congratulated.

11. The representative of Colombia had stated in his introduction of the report that in his country there were no longer indigenous reservations, but only "protected areas". He would appreciate some clarification on the difference between those two concepts: was it a difference of terminology, or of substance?

12. Mr. BANTON said he too recognized that the Government of Colombia found itself in difficult circumstances, and that it would not be right to expect too much of it. He had only two comments to make. First, although he appreciated the "ethnographical guide" given on page 18 of the fourth periodic report (CERD/C/166/Add.1), in future reports he would like such information to be supplemented by figures indicating the proportion of each group in relation to the total population, and by an indication of the proportion of country dwellers as compared to town dwellers (it could be imagined that a considerable number of Indians from traditional communities had come to live in the towns).

13. With regard to the incidents involving security forces and emberas Indians that had occurred on 24 March, 14 April and 15 May 1987 in the Chocó region concerning mining rights, he had noted that the rebellious Indians had been classed as "guerrillas". The events concerned had caused an international outcry, which had led the Government to set up a commission of inquiry. The results of that commission's work should be communicated to the Committee, either orally or in the next report. He was aware that the incidents in question were not necessarily attributable to discrimination on grounds of race or colour, and that there might be reason to suspect the Indians of guerrilla activities. However, in order to form an opinion on how the Indians had been treated, one first needed to ask whether persons of European origin would have been treated in the same way. Such incidents - on which the Committee should be given more information - could well arise following differences over mining activities, exploitation of forests, etc.

14. Mr. RIVAS POSADA (Colombia) thanked members of the Committee for their comments and questions on his country's third and fourth periodic reports. He assured them that those comments - beginning with those of the Rapporteur, Mr. Ferrero Costa - would be transmitted to the Government. For the present, he would endeavour to reply in so far as he was able.

15. Mr. Ferrero Costa had begun by making two general comments. In regard to the first comment, he recognized that it was not enough for a State party to assert that in theory it conformed to international instruments: it should

indicate specifically what laws or other measures it had adopted for that purpose. Colombia, for its part, had endeavoured to supply the Committee with the fullest information possible in that regard, and would continue to do so. Secondly, Mr. Ferrero Costa had asked whether Colombia was contemplating the possibility of recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals claiming to be victims of a violation of any of the rights set forth in the Convention, under article 14 of that instrument. That question was currently under discussion in Colombia. The Government was actively studying all possible ways of improving the protection of the rights defined not only in international human rights instruments, but also in instruments adopted under the auspices of the Red Cross. Colombia would continue to consider the possibility of accepting the procedure provided for under article 14 of the Convention.

16. Mr. Ferrero Costa had asked what the position was in regard to the constitutional reform referred to in paragraph 36 of the fourth report. That reform was designed to increase the extent to which citizens could become involved in the political process, to modify important aspects of the administration of justice, and to modernize a number of government institutions which had been so weakened by the crises the country had undergone that they had been unable to deal effectively with the particularly serious social and economic upheavals that had taken place in recent years. The draft bill had been approved on first reading in the course of the 1988 parliamentary term. Two readings were required before any reform of the Constitution could be adopted, and it was highly likely that the draft bill would be adopted on second reading. The reform should permit the Government to establish institutions better adapted to the kind of social and economic problems currently facing the country.

17. With regard to projects for indigenous development, in Colombia, as in many other Latin American countries, although new Governments might change the names of programmes, the continuity of those programmes was not affected. The basic features of projects developed under the preceding administration had been retained, and even strengthened. A new land reform act had been adopted in 1988. That act was beginning to bear fruit, but it would be some time before the effects of the new land distribution policy on the indigenous populations could be ascertained.

18. Mr. Song Shuhua had spoken of the difficulty of having a duty to protect disadvantaged populations and to preserve their cultural values and identity, while at the same time having a duty to encourage their development, in other words having to strike a balance between paternalism and autonomy. That problem was common to all countries which had indigenous populations, and it arose to a marked degree in Colombia. Indigenous populations had already been living in Colombia before the conquest of the country by a foreign power. That conquest had not been a peaceable one, any more than the attempts by the colonial power to assimilate the indigenous populations. During the conquest, the indigenous populations had been decimated. After it, the Government had endeavoured to see to it that those who had survived were protected while at the same time assimilating them. He had attempted to give an historical explanation of these events at the previous meeting. At one time the early stages of Spanish colonization had been seen in a romantic light: they had been regarded as the first step on the road to progress, and as inspired by the ideals of the French revolution. But in many respects Spanish colonial

policy had been tainted by paternalism. It was not until the end of the nineteenth century that attitudes had changed, and it had gradually come to be realized that indigenous communities had to be respected if the cultural and social heritage they represented was to be preserved. Although it was true that certain populations were in need of special protection in some spheres because they were marginal in the historic, economic and social sense, it was equally true that they had the right to participate actively in decision-making on matters that concerned them. A practical compromise had to be reached which would guarantee the development of indigenous communities, while at the same time preserving their cultural identity. It was not a matter of imposing on such communities the kind of development characteristic of modern civilization, but rather of enabling them to develop within the framework of their own cultural and traditional values. It was in the light of these considerations that the Government had formulated its development policy for such communities. In protecting their lands and their cultures, in helping them to find markets for their handicraft production, and giving them easier access to the national education system, it was stimulating their development while maintaining a proper regard for their cultural identity. The Government was thus making every effort to resolve the contradiction between the need to grant indigenous communities a degree of autonomy, and the need to promote their development. He was sure that that complex and delicate problem would eventually be solved.

19. Where Colombia's relations with South Africa were concerned, his country had no relations - diplomatic, trade or consular - with South Africa. In any event, the way Colombian trade was structured made it unsuitable for trade relations with that country.

20. In regard to the obligation to respect the provisions of article 4 of the Convention, a Code of Penal Procedure had been adopted at the end of 1988. The study group responsible for preparing the Code had been working on it for several years, and had had great difficulty in having it approved. There were certain technical aspects that required more extensive study by experts. Colombia's next report would indicate what results had been achieved in that field.

21. Mr. Ferrero Costa had asked for more specific figures regarding certain questions of particular interest to the Committee, such as, for example, demographic composition. It was difficult to compile statistics of that kind in Colombia because it was a country of mestizos. Those who were entirely white - almost exclusively of Spanish origin - represented under 20 per cent of the population. Over 50 per cent were mestizos - persons of mixed Indian and white descent. Mulattos, the result of a mix of whites and black descendants of African slaves brought in to work mainly in the gold and silver mines, represented some 20 per cent of the population. In addition, 7 to 8 per cent were either pure black, or black with very little racial mix, and finally what were regarded as pure indigenous persons comprised some 1 to 1.5 per cent of the population. All the figures he had given were very approximate, because it was difficult to define race from the biological point of view. Only tribes which had their own dialect, and which inhabited a clearly defined territory some distance away from any lines of communication, could be considered as distinct ethnic groups. Accordingly, it was not easy to say with any degree of accuracy how many indigenous people, blacks, mestizos or mulattos were working in Government offices, teaching, or the public services. Those of pure Indian blood were few in number and lived in

remote rural areas: because they were somewhat cut off from the rest of the country, their participation in economic and social life was rather limited. Great efforts had nevertheless been made to bring primary education to those isolated rural areas. It should be possible to gain from the electoral registers some idea of the share of certain indigenous groups or communities in the voting process, and the question would be dealt with in Colombia's next periodic report.

22. Mr. Ferrero Costa had also asked for information on the Office of the Presidential Adviser on the Defence, Protection and Promotion of Human Rights. That Office had been set up at the end of 1988 to co-ordinate and centralize efforts to identify human rights violations. Its task was to prepare reports on the circumstances under which the violations had occurred, and to bring those reports to the attention of judges and investigating authorities: it worked in very close collaboration with the Public Prosecutor, who was empowered to order inquiries into violations of human rights or other offences committed by officials at all levels.

23. Finally, Mr. Ferrero Costa had spoken of the need to assess the situation in Colombia in terms not only of racial discrimination but also of respect for all human rights, in the light of the problems currently confronting the country, notably the problem of violence which had plagued it for several decades. Various groups were resorting to violence in an attempt to change existing institutions, rather than utilizing the democratic procedures already to hand.

24. Another problem the Government had to face was drug trafficking. It was only recently, when they had begun to feel themselves threatened by it, that the industrialized countries had become aware of that problem. Colombia was unfortunately a centre for the processing and distribution of drugs. Dealers were openly engaged in a bloody war against the legally constituted authorities of the country, which were struggling to halt the trafficking, and had singled out the Ministry of Justice as a particular target for their attacks. One Minister of Justice had been assassinated, as had 11 of the 24 judges of the Supreme Court and a number of other persons who had been investigating drug trafficking. Under such circumstances, it was not only hard to provide all citizens with protection on a permanent basis, but also particularly difficult to find the resources and the machinery to assist, protect and stimulate minorities - in Colombia's case, the indigenous populations, which were so isolated, so poor and so deprived of the resources of modern civilization.

25. In reply to a comment from Mr. Partsch regarding respect for the social structures of indigenous populations, he said that there existed within the indigenous communities local councils (*cabildos*) which were responsible not only for regulating important aspects of community affairs, but also for administering justice. The *cabildos* settled family disputes or economic problems. They were not autonomous organs of government within the State, but simply traditional bodies, whose powers, though limited, were nevertheless in keeping with the values and the time-honoured traditions of the indigenous groups. The fact that the ways and customs of the indigenous peoples were respected did not mean that they were not considered as fully fledged citizens: their status as citizens was guaranteed under the Constitution. For example, no limitations were imposed on their right to vote or their right to be elected, and even illiterates were entitled to vote.

26. Mr. Partsch had asked whether there existed any manuals on national legislation, and if so, in what languages. He pointed out that only some 20 of the indigenous languages were in fact written languages, and it was most often the missions that undertook to translate the manuals in question so that they could be distributed in the vernacular. It was a costly and difficult task, but progress had nevertheless been made.

27. Mr. Song Shuhua had mentioned the social agitation that had occurred in the remote areas where the indigenous peoples had taken refuge, a remoteness which greatly complicated the Government's task when endeavouring to quell disturbances. He pointed out that not all regions occupied by indigenous peoples necessarily suffered from disturbances. In reply to another question from Mr. Song Shuhua regarding the protection of the environment, he said that the experience gained by indigenous peoples, who were used to protecting their environment against erosion, was of great value for the Government. The indigenous peoples also contributed in other ways to the protection of natural resources.

28. In regard to the methods used for eliminating illiteracy among indigenous peoples who had no access to the ordinary education system because they lived in too remote areas, or because their educational level was too low, he said that special courses were organized by volunteers who endeavoured to reach such populations and to bring them out of their isolation. In any event, the majority of the non-Spanish-speaking indigenous population were considered as illiterate.

29. In reply to Mr. Rhenan Segura, who had asked what the difference was between "protected areas" and "reservations", he said that the system of "protected areas" dated from the colonial period: under that system, the indigenous community was granted the right to land, but exclusively on the basis of precarious tenure; the community only had usufruct, while the land remained the property of the State. Today, the official policy was gradually to transform the reservations into "protected areas" over which the indigenous populations would have a true title of collective ownership which was more in keeping with their traditions.

30. In reply to Mr. Banton, who had asked whether the indigenous populations were moving into the urban areas, he replied that populations which were pure-bred or only partially of mixed race generally lived at a great distance from urban areas, which was why they had retained their own cultural values. Mr. Banton had referred to alleged violent incidents in the region of Chocó, a humid tropical region near Panama inhabited by indigenous populations descended from black slaves. He had not heard of such incidents, but he would ask the Colombian authorities to give details on the matter in Colombia's next periodic report.

Mr. Yutzis took the Chair.

31. Mr. SHAHI noted from paragraph 43 of the fourth periodic report (CERD/C/166/Add.1) of Colombia that in its 25 years of operation the land reform had provided a solution for 35,000 peasant families, in other words for some 1,400 families a year, representing barely 4 per cent of the target population. He asked whether the figure of 35,000 families really did represent only 4 per cent of the population, and whether the area of land available was sufficient to enable the land reform eventually to achieve all its goals.

32. He would also like to know whether landowners sometimes rented out their land, or whether the indigenous populations only cultivated land that had been made available to them on a collective basis. Was it planned to adopt agrarian legislation to improve the conditions of such populations?

33. Mr. RIVAS POSADA (Colombia) said that the figures quoted in paragraph 43 of the fourth periodic report of Colombia were probably erroneous. Nevertheless, the implications of the paragraph were clear: the land reform that had been in operation for the past 25 years was a failure. Hence the new land reform, introduced in 1988, which would undoubtedly give much more satisfactory results.

34. Generally speaking, the indigenous populations cultivated only their own land, but, when the land available in the protected areas was not extensive enough, some of them had to leave their own group and their own territory to work as paid labourers or "share-croppers"; however, they would then pay rent in kind to the landowners, and their status was precarious.

35. Mr. SHAHI said he would be glad if in its next periodic report Colombia could give details regarding the wages paid to share-croppers working for a landowner. In Pakistan, share-croppers normally kept 50 per cent of the produce for themselves, following what was usually traditional practice.

36. Mr. RIVAS POSADA (Colombia) pointed out that the legal system in Colombia was neither a common law system nor one of customary law, and labour contracts had to be concluded in written form, in accordance with the relevant legislation. That made the matter more difficult to resolve.

37. The CHAIRMAN thanked the representative of Colombia for having replied so willingly to the Committee's questions. The Committee had thus concluded its consideration of the third and fourth periodic reports of Colombia (CERD/C/143/Add.1 and CERD/C/166/Add.1).

Mr. Rivas Posada (Colombia) withdrew.

Eighth, ninth and tenth periodic reports of the Philippines (CERD/C/172/Add.17)

At the invitation of the Chairman, Mrs. Escaler (Philippines) took a place at the Committee table.

38. Mrs. ESCALER (Philippines) introduced the eighth, ninth and tenth periodic reports of the Philippines, presented as a single consolidated report (CERD/C/172/Add.17). The report covered the period from 1984 to 1988, but dealt primarily with the legislative, judicial and administrative measures adopted by the current Philippine Government between 1986 and 1989 to give effect to the provisions of the Convention. When the Aquino Government had come to power on 25 February 1986, following the most peaceful of revolutions, one of its first tasks had been to restore democratic institutions. While Mrs. Aquino had abolished the Marcos Constitution, she had left untouched the Bill of Rights, which defined the rights of citizens.

39. In the field of human rights, the first official acts of President Aquino had been to release all political prisoners, to create a Presidential Committee on Human Rights - now replaced by the Philippine Commission on Human Rights - to ratify on 28 February 1986 the International Covenant on Civil and

Political Rights, and to ratify in April 1988 the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Finally, at the beginning of August 1989, the President had signed the instrument of ratification of the Optional Protocol to the International Covenant on Civil and Political Rights.

40. However, those achievements had their limitations, since it was impossible to institutionalize human behaviour or respect for human rights, particularly in view of the fact that in the Philippines the legitimate Government still had to contend with a ruthless insurgency determined to overthrow it. In such a situation, it was easy for insurgency propagandists to depict any act of legitimate self-defence as a violation of human rights.

41. In regard to racial discrimination, the adoption of preventive measures seemed almost unnecessary, because racial discrimination as defined under article 1 of the Convention was entirely alien to the Philippine psyche and to Philippine mores, culture and experience. Not one case of alleged violation of the Convention had been reported, and no person, group or organization, whether public or private, had ever been accused of committing an act of racial discrimination or of disseminating propaganda based on theories of racial superiority. Accordingly, if the Philippine Government had signed and subsequently ratified the Convention in 1967, it was essentially in order to express its solidarity with the international community on the need to prevent racism, racial discrimination and practices akin to discrimination.

42. There was only one point on which the Philippines might be open to criticism and might be accused of violating the Convention: the socio-economic development of the indigenous populations was still at a relatively low level. However, that low level of development was in no way attributable to racial discrimination; it was the result of colonialism, economic exploitation, and four centuries of deliberate Government neglect. The present Philippine Government had set out to remedy that situation, and she referred in that connection to article II, section 22, and article X, sections 15-21 of the Constitution. Those articles made provision for the creation of autonomous regions in Mindanao and the Cordilleras, while at the administrative level the former Office of Muslim Affairs and Cultural Communities had been reorganized into three separate agencies - the Office of Muslim Affairs, the Office of Northern Cultural Communities, and the Office of Southern Cultural Communities. Those three agencies should enable the Philippine indigenous communities to achieve genuine self-sufficiency in the socio-economic field (CERD/C/172/Add.17, paras. 27-31).

43. Where the application of article 3 of the Convention was concerned, her country could not but condemn wholeheartedly the apartheid policy of South Africa. In regard to article 4, the Government had in April 1978 adopted a preventive measure in the form of a presidential decree declaring unlawful any violation of the Convention. To date, no cases of violation of that decree had been reported. Articles 5, 6 and 7 of the Convention were examined in detail in the report submitted to the Committee, but she wished to point out that the Government had in addition adopted a legal system penalizing acts prohibited under the Convention. The judicial system also institutionalized remedies available to victims, who had the right to appeal to the ombudsman, and as a last resort, to the Philippine Commission on Human Rights. The latter was unique in that it was a body set up under the Constitution, designed to be completely independent of all political agencies

of the Government. Equality before the law was a right enshrined in the Constitution, and all political, civil, economic, social and cultural rights enumerated under article 5 of the Convention were also guaranteed.

Mr. Garvalov took the Chair.

44. Mr. YUTZIS, speaking as rapporteur entrusted with the examination of the report of the Philippines (CERD/C/172/Add.17), thanked the representative of the Philippines for the account she had given of the political developments currently taking place in her country. In the end, only democracy could effectively guarantee application of the Convention, because only democracy created the conditions required for human rights to be fully respected. Speaking for himself, he wished the young democracy of the Philippines every success.

45. He noted from paragraph 6 of document CERD/C/172/Add.17, as well as from the introduction by the representative of the Philippines, that emphasis was laid on the complete absence of racial discrimination in the country. Nevertheless, the Government itself admitted that colonialism and imperialism had brought with them certain forms of inequitable social relationships, leading to racial distinctions which could be perceived as tantamount to discrimination (ibid., para. 8).

46. In every society, two factors exerted a predominant influence over human relationships: the power exercised by the wealthy, and the power that derived from prestige. History showed that those two types of power were often combined and were closely linked - though in a way that was difficult to define - to the colour of skin of those who enjoyed them. Accordingly, it was not easy to decide to what extent social relationships were affected by social and economic problems and to what extent they were affected by racial discrimination. Because the Philippines had inherited from its colonial past a social structure with a number of clearly defined classes, it was not impossible that some racial prejudices might have survived, if only in an unconscious form.

47. The Philippines was to be congratulated on having kept in force Presidential Decree No. 1350-A, promulgated on 17 April 1978 with a view to giving effect to the provisions of the Convention, a decree which had been of great importance, notably for the application of article 2, paragraph 1 (d), and article 4.

48. He noted with satisfaction the intensive efforts being made by the Philippines in support of the struggle against the apartheid régime.

49. Where article 5 of the Convention was concerned, it was true that information concerning the demographic composition of the population was given in the report, but he would like that information to be supplemented in the next report by specific figures on the composition of the various tribes, so that the Committee could gain some idea of the living conditions of the members of indigenous communities.

50. The creation of three offices specially designed to address the needs of the various cultural communities, referred to in paragraph 13 of the report, was a very interesting innovation, and he wondered how many members of the communities referred to were employed in the three offices concerned.

51. It would be interesting to know whether members of such communities were entitled to legal aid in their own language, and, if not, whether the Government planned to take any steps to make such aid available.

52. Where land ownership was concerned, he wondered what was the extent of the ancestral lands which had been, or were to be, restored to the indigenous communities and what kind of title would be given them; very often, indigenous communities owned land collectively, and the concept of private property was unknown to them.

53. He would welcome further details with regard to the island of Luzon, which was occupied, as he understood it, by seven ethnic groups. Had any measures been taken for the benefit of those communities, and what was their exact number?

54. The Philippines was currently undergoing a period of transition, and was suffering from trouble stirred up by various armed movements, against which - as the representative of the State party had pointed out - the Government had to defend itself. However, the dividing line between the protection of the State - and hence the defence of human rights - and violation of those rights was very blurred, and sometimes the results achieved were not what had been intended. Accordingly, the situation of communities which had to endure not only the attacks of the insurgency movements but also the operations of the security forces gave cause for concern.

55. In conclusion, he had found in the report of the Philippines signs of openness and of hope for the country's future.

Mr. Lamptey resumed the Chair.

56. Mr. BESHIR said he had read with particular interest the report of the Philippines (CERD/C/172/Add.17), a country which had carried out the most peaceful revolution in the world's history. Nevertheless, the country was suffering from troubles stirred up by persons the Government described as "ruthless insurgents", without any real indication of who such insurgents might be. It would be useful to have further details of those insurgency movements, and the circumstances underlying the conflict.

57. It would also be helpful to have more information about the responsibilities of the three offices set up to deal with the problems of specific cultural communities (para. 13), and on how they operated: only brief indications were given in paragraph 67.

58. In regard to education, it would be useful to know what were the education projects which the report had described as designed to promote peace. In paragraph 33 (b) reference was made to a Shariah programme. He would like to know whether that programme had been devised by a single Muslim group, or whether several groups had been involved in planning it.

59. Finally, it would be helpful to have more details on the living conditions of those who inhabited the troubled areas: he wondered, in particular, whether they had been moved into other regions.

60. Mr. GARVALOV said that the report of the Philippines (CERD/C/172/Add.17), supplemented by the very instructive introduction by the Philippines representative, was excellent. The frankness with which the country's problems were dealt with bore witness to the Government's determination to respect the Convention.

61. It was stated in paragraph 6 of the report that Filipinos were all descended from a single racial stock, but that appeared to be contradicted by paragraph 11, which referred to the existence of 110 ethnic tribes. It was further stated in paragraph 19 that 0.3 per cent of the population were foreign nationals. Some further clarification would be appreciated.

62. The position of the Philippines in regard to the *apartheid* régime was highly commendable, and the only remaining question was whether the country maintained any relations with South Africa.

63. Although the report claimed that Philippine legislation guaranteed the promotion of full employment, nothing was said on the subject of the right to work, and he would appreciate more details on the matter.

64. Mr. PARTSCH recalled the important role played by Mr. Ingles, a Philippine magistrate who had been a member of the Committee since its inception, and who had made a significant contribution to the development of the Committee's established practice.

65. It was well known that the Government was endeavouring successfully to safeguard the identity of its various language communities, but it would be useful to know whether any teaching was given in those languages. It was true that nothing in the Convention compelled States to set up schools offering teaching in ethnic languages, or to contribute to the financing of private schools; nevertheless, it would be interesting to know, purely for information, whether any such schools existed in the Philippines.

66. Mr. ABOUL-NASR joined other members of the Committee in thanking the representative of the Philippines for her interesting introduction and in paying tribute to the authors of the report (CERD/C/172/Add.17). However, he wished to express a reservation in regard to the statement that had been made by the representative of the Philippines - and also by other States - to the effect that the Convention had been ratified out of "solidarity"; in his view, if States ratified the Convention, it must be with the firm intention of giving effect to its provisions.

67. The question of the insurgents was not very clear to him: he wondered whether they belonged to the indigenous or to the Muslim communities, and what were their declared objectives. In addition, he seemed to recall that some years earlier an agreement between the Government and the insurgents had been envisaged: he wondered what had eventually happened.

68. Mr. RESHETOV said he had followed with interest and sympathy the historic changes that had taken place in the Philippines and were highlighted in the report (CERD/C/172/Add.17).

69. The brief historical resumé in paragraph 7 gave a good idea of the current situation to the extent that it resulted from several centuries of diverse influences. However, he could not help reflecting that States very often tended to ascribe enduring socio-economic conditions to historical reasons. It was the responsibility of Governments in all countries to take steps to improve the living conditions of their populations.

70. The Committee was accustomed to hearing of ethnic, national or religious communities, but it was the first time that it had encountered the notion of "cultural communities". In view of the cultural richness of the Philippines, that term deserved some further clarification.

71. Paragraphs 15-18 appeared to suggest that, although no cases of racial discrimination had yet occurred in the Philippines, the Government did not exclude the possibility that such cases might arise in future. If that interpretation was correct, the Committee could not but welcome such an attitude, since it showed that the Philippines were aware that the Convention aimed not only to suppress racial discrimination, but also to prevent it.

The meeting rose at 6 p.m.

843rd meeting

Wednesday, 16 August 1989
at 10.15 a.m.

Chairman: Mr. LAMPTEY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Eighth, ninth and tenth periodic reports of the Philippines (CERD/C/172/Add.17) (concluded)

At the invitation of the Chairman, Mr. Villarroel and Ms. Quisumbing (Philippines) took places at the Committee table.

1. Mr. SONG Shuhua said the Philippine Government was to be commended on its comprehensive report (CERD/C/172/Add.17) and on the work done since the enactment of Presidential Decree No. 1350-A.

2. With regard to the three offices set up to meet the needs of the cultural communities (para. 31), he asked whether the aid provided by the Government was simply financial or material or whether it was designed to help the communities develop their economies through their own efforts. He also asked what measures had been taken in favour of minority groups in remote areas to guarantee the equal access to opportunities for public service mentioned in article II, section 26, of the 1987 Constitution and what effect the Government's measures had had on the 4.5 million people who lived in mountain areas and had a low level of education.

3. He welcomed the statement in paragraph 17 of the report that there had been no complaints about racial discrimination since the enactment of Presidential Decree No. 1350-A, but asked whether such cases might have occurred and been dealt with as common offences. In some cases people in urban areas held those from rural areas in low esteem. When people all belonged to the same cultural group, differences tended to be social and economic; backward ethnic groups normally lived in remote villages.

4. Noting that, according to paragraph 58, the electoral and appointive government positions held by minority groups had mainly gone to Muslims, he asked what was the situation of ethnic groups. With so much progress in the past few years, he hoped that the next report of the Philippines would describe the effects of the decrees and regulations enacted by the Government.

5. Mr. SHERIFIS, referring to the representation of minority groups in government positions, asked whether there was any legal guarantee that a certain percentage of such positions would always be held by minorities, or whether it was simply by chance that at present there were a large number of Muslims who had been appointed to government positions by virtue of their abilities.

6. The CHAIRMAN invited the representatives of the Philippines to reply to points raised by the Committee during its discussion.

7. Mr. VILLARROEL (Philippines) said that, in introducing the report, the Philippine delegation had stressed the country's commitment to the Convention in terms of solidarity with the international community. It had done so

because the existence of racial discrimination or discrimination-like practices was barely conceivable in the Philippines. That was not to say that such practices could not occur, but until they did, the Government preferred to believe they could not. It recognized, however, that a society utterly devoid of all forms and manifestations of racial discrimination did not exist.

8. He invited Ms. Quisumbing, the Assistant Secretary for Human Rights and Humanitarian Affairs of the Philippines, to reply to the Committee's questions.

9. Ms. QUISUMBING (Philippines) said that Mr. Yutzis had put forward the interesting theory that possessions and prestige were the two bases for power, and had asked if that was so in the Philippines. She agreed that that theory did much to explain the differential status of groups of people in the Philippines, particularly in the economic and political fields. The explanation went back to the colonial period, when the economic power of the *conquistadores* was equated with political power. In countries with an industrialized economy those two bases of power were vested in different groups, but in the Philippines and some other countries economic power still coincided with political power. The problems arising from that situation were now being dealt with through the 1987 Constitution.

10. Vestiges of the colonial bases of power were evident in Filipino culture. When the Spaniards had conquered the Philippines, the land had been declared the property of the King, and the doctrine whereby all lands and mineral and other natural resources belonged to the State, which had replaced the King, still underlay the present law. Private ownership of those natural resources existed only by State mandate: land might be owned by private individuals under the Constitution, but the theory remained that it was the State which owned the patrimony of the nation and which had alienated a natural resource to private individuals. However, private ownership under the Constitution was a basic principle in the Philippines and private property had been institutionalized in the Constitution.

11. With regard to the linking of political and economic power to skin colour, which had existed under the Spanish and American rulers, she said that, until recently, some foreign-owned companies in the Philippines had pursued recruitment practices that gave preference to people of Spanish descent, even distinguishing between *peninsulares*, i.e., people coming from Spain, and *mestizos*. That policy had existed until the 1970s but was now outlawed. Discriminatory recruitment practices had been exacerbated by sometimes large differentials in pay; oil and mining companies in the Philippines had, for example, employed expatriate whites at a higher rate of pay even where better qualified local candidates were available. Those practices, which had caused several strikes, had been rampant until recently, but had now been dealt with by the labour laws. Unfortunately, modern advertising for products to promote a fair skin or increase height had not helped to eradicate the idea of the superiority of certain physical attributes.

12. While she agreed with Mr. Yutzis that such vestiges of colonialism existed, legally and officially, the Government did not countenance racial discrimination, as described and defined under the Convention. On the contrary, the 1987 Constitution for the first time reflected a concern for the specific interests of the indigenous populations of the Philippines and those of the cultural communities. The Aquino administration was working on

practical programmes to implement the constitutional provisions on social justice, equality, human rights and the attainment of a just and humane society.

13. Some examples of such programmes were the Comprehensive Agrarian Reform Programme, the linchpin of the Aquino administration's effort to promote equality and the elimination of poverty, and the introduction for the first time of free high school education for all. The third example had been announced by the President in her State of the Nation address: for the next 1,000 days her administration would concentrate the Government's limited resources on alleviating the lot of the lowest 30 per cent of the population in terms of income. That sector of the population was to be found in the rural areas and hinterland, and included some indigenous and ethnic communities.

14. In reply to Mr. Yutzis' question regarding the status of Presidential Decree No. 1350-A, she said that the Decree was law in the Philippines and needed no ratification, since all presidential decrees, unless expressly repealed or by implication superseded as being inconsistent with the 1987 Constitution or more recent legislation, were deemed to be in effect. Presidential Decree No. 1350-A implemented the Convention as well as all other conventions against discrimination to which the Philippines was a party. Decree No. 1350-A in particular declared illegal, and provided a penalty for, all organizations and organized activities which promoted, and incited to discrimination.

15. With regard to demographic information on the status and life of different tribes, she said that the available information on indigenous populations unfortunately dated from 1980, because a national census was taken only every 10 years. It was hoped that the next national census in 1990 would include information on the conditions of life of the indigenous and ethnic populations. More emphasis would be placed on the hill tribes because of the new provisions of the Constitution in that respect. The Philippines would be glad to provide the Committee with that information.

16. Replying to questions on the offices established to protect and promote the interests of cultural communities (mentioned in paragraph 13 of the report), she said that the three offices were all under the direct supervision of the Office of the President. Their history showed the trend of Philippine policy towards its indigenous populations and cultural communities. Until 1987 there had been just one office looking after the interests of all cultural minorities; it had been significantly called the Office of National Integration and its chief had usually been appointed from the Muslim community. Because of the rising awareness of other cultural communities, a request had been made for those communities and ethnic groups to have their own offices. In response, President Aquino had created three separate offices. The Office of Northern Cultural Communities catered to hill tribes and ethnic communities, mainly on the island of Luzon. The Office of Southern Cultural Communities was concerned with all communities other than the Muslim community, which was concentrated in the south, in about five provinces of Mindanao. The idea was that that office would look after non-Muslim cultural communities and ethnic groups found in Mindanao and in the Visayan Islands. The officials and staff of the offices came from the communities themselves.

17. The change in policy had been very significant. When there had been just one office for all ethnic, indigenous and cultural communities, the Government had followed the policy of assimilation inherited from colonial Governments, which sought to eradicate cultural boundaries and blend all communities into a Filipino culture. Recently, dissent from that policy of assimilation had become very strong, and the acceptance of a change of policy came with the implementation of the policy of integration, which was in harmony with article 2, paragraph 1 (e), of the Convention.

18. With regard to the languages of indigenous populations, anthropologists had said that the Philippines, composed of 7,100 islands, had a rich linguistic culture, with some 80 identifiable languages falling into 20 language groups. At least two cultural and linguistic groups were represented in her own parentage: her father and mother had come from provinces which were geographically close, but they could not possibly have understood each other except through a common language; their own languages had two different alphabets. Theirs were just two of the numerous major languages in Luzon, and there were many others in Mindanao and the Visayans; the Muslim communities in the south also had their own languages and the hill tribes, in addition to their own languages, had adopted what they considered to be their dominant regional language or dialect. For example, in the Cordilleras, a mountain range in Luzon, several tribes and linguistic and ethnic communities, all speaking their own language or dialect, also all spoke Ilocano, basically a lowland language, and also Filipino. There was thus a common language while the regional languages and those of different groups had been preserved. The principle was now accepted that national identity could only be enriched by preserving and developing the languages and cultures of different groups.

19. The question of ancestral land was one of the major points dealt with in the 1987 Constitution. Article 12, section 5, of the Constitution provided that the State should protect the rights of indigenous communities to their ancestral lands in order to ensure their economic, social and cultural well-being. Article 13, section 6, provided that the State should apply the principles of agrarian reform, whenever applicable and in accordance with the law, in the distribution or utilization of other natural resources, including land, subject to prior rights, the homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands. It was therefore clear that the Government had to implement those constitutional provisions at the present time and the administration of President Aquino was awaiting the relevant legislation. In that connection, she said that two bills before the Senate dealt with the matter of protecting the rights of national cultural communities to their ancestral lands.

20. The guidelines for determining the distribution and identification of ancestral lands were being considered at the present time in the legislature body. However, there were some areas which were already identifiable as ancestral lands, for example, the burial grounds and sacred grounds of indigenous populations.

21. The existing legislation had caused some problems, since it imposed what was known as the parent title, a system under which deeds were given to individuals, rather than to groups or communities. In fact, no system in the Philippines recognized communal ownership of land. Therefore, there was a need for implementing legislation with regard to the relevant provisions of the 1987 Constitution.

22. Referring to the impact of the insurgency and anti-insurgency campaigns, she said that one of the results of the armed conflict on the population in general was the displacement of persons because of voluntary evacuation. The general practice was to warn civilians in advance that counter-insurgency activities were to be undertaken. The civilians then left the area voluntarily and were put up in temporary camps. They generally returned to their homes following the cessation of the counter-insurgency activities.

23. Attention should also be drawn to the economic effect, since access to livelihood sources became very difficult for some tribes. For example, pottery makers found it difficult to obtain clay in mountainous areas occupied by insurgents. Ratan furniture makers and woodcarvers were similarly unable to obtain the material they required in the forests. Illegal taxation by insurgents caused the hill tribes and ethnic groups to stay away from areas where they generally gathered material for their livelihood. Many ethnic groups were frequently caught up in the struggle for political dominance in a particular village.

24. The Philippines had always had a unitarian form of government, in other words, a very strong central government. The provinces were divided into municipalities, which in turn were divided into villages. They were political and administrative units of the Government, which controlled and supervised them.

25. The 1987 Constitution provided for the establishment of two autonomous regions, one in Muslim Mindanao and the other in the Cordilleras. During the previous administration of President Marcos, a rebellion in the two areas had become very pronounced.

26. Prior to 1988, the Cordilleras had been divided into two separate administrative regions and complaints had been made by the Cordilleras people that their representation was virtually non-existent, since the regions were dominated by lowlanders. One manifestation of their dissatisfaction had been armed rebellion. As a result of peace talks, President Aquino had signed an executive order creating a separate Cordilleras region under the leadership of the people of the Cordilleras themselves. That form of administrative mechanism was a transitional stage leading to eventual regional autonomy in accordance with the Constitution. A similar process had taken place with representatives of Muslim Mindanao, but it had not been as successful as in the case of the Cordilleras.

27. The armed insurgency in the Philippines had started in 1969 with the founding of a Maoist group advocating armed rebellion against the Government. Guerilla tactics were used by the armed insurgents. Recently, they had moved from rural areas to urban centres.

28. A recent example of the ruthlessness of the insurgents had been the massacre of 30 persons worshipping in a church. The New People's Army had claimed responsibility for that deed and had rationalized it as being justified. The campaign was losing its appeal in the countryside for several reasons, including the discovery of mass graves of persons considered to be defectors from the New People's Army, and rampant killing by units operating in urban areas.

29. The insurgents operated on two fronts. Their political arm consisted of an umbrella organization, the National Democratic Front (NDF), which operated through some legitimate groups and infiltrated labour and political organizations. The NDF was currently soliciting support in Europe which would be channelled to the armed component of the insurgency, the New People's Army.

30. The preparation of a Shariah code was a project of the Office of Muslim Affairs undertaken in co-operation with the Government and the University of the Philippines. During a period of about two years, various Muslim groups, Imams and Muslim scholars in the Philippines and Arab countries had been consulted and had prepared a Shariah code for the Philippines. It had been enacted into law in the late 1970s and was applicable to all Muslims in the Philippines. In a sense, it was an exception to the Civil Code of the Philippines, inherited from the Civil Code of Spain. Shariah courts had been established to implement and interpret the code and were currently found in Mindanao. There was a Muslim Justice in the Supreme Court of the Philippines.

31. With regard to the question concerning the impact of colonialism, she agreed that the Philippines was at present free to choose its path of development and that it must make that choice. However, there were serious constraints on the exercise of that choice, such as the existence of a huge foreign debt amounting to some $30 billion. In that connection, she said that, of that amount, $28 billion constituted the legacy of the former Marcos administration. Forty per cent of the national budget was earmarked to service the debt. In addition, the policy of international financial institutions, coupled with pressure from private lending institutions, placed serious constraints on the path of development chosen by the Philippine people. It could not be denied that the foreign debt was the result of colonial policies of the past and, possibly, of neo-colonialism at the present time.

32. Her Government maintained no diplomatic relations with the Government of South Africa, which was consistent with its policy of supporting the principles of equality of all men and respect for human rights.

33. The Constitution guaranteed the right to work, to organize and to enter into collective bargaining. Free enterprise was institutionalized in the Constitution. Unfortunately, her country was facing the problem of unemployment and underemployment. The plight of labour in the Philippines was a phenomenon that had caused some problems with regard to the human rights of Filipinos abroad. It was ironic that Filipinos were economic refugees whereas the Philippines was a haven for refugees from other countries. She recalled that at the International Conference on Indo-Chinese refugees, held at Geneva on 13 and 14 June 1989, her country had offered part of its territory as a refuge for refugees from other countries.

34. With regard to the question whether the Philippines had established special schools for the purpose of educating minorities, she said that no special schools as such existed for her country's cultural communities. The Government had, however, recognized the need to promote and develop the cultural heritage of the various ethnic groups and had therefore made regional educational offices responsible for devising regionally relevant curricula to supplement the national core curriculum. The first three years of schooling were in Filipino and regional languages, with English being introduced in the

fourth year. It was thus hoped to protect the regional languages and encourage the development of regional cultures. She highlighted the "tent school" project which had been launched in region I and had recently received a UNESCO award. That project provided schooling for children in nomadic tribal groups and there were plans for its extension to other regions. She also drew attention to the Madrasah schools referred to in paragraph 33 (a) of the report.

35. She thought that Mr. Aboul-Nasr's question on the meaning of ruthless insurgency had already been answered but she wished to emphasize the impact of that insurgency on the indigenous populations, who were frequently caught in the cross-fire and also suffered economic hardship.

36. The Tripoli Agreement between the Government of the Philippines and the Muslim Liberation Front called for the establishment of an autonomous Muslim region within the framework of the Philippine Constitution. The Agreement had been implemented by a very recent law, pursuant to article 10 of the Constitution, providing for the creation of an autonomous region in Muslim Mindanao, which would include 30 provinces, cities, municipalities and geographic areas sharing a common and distinctive cultural heritage and common social and economic structures. In accordance with the Constitution, that law would not enter into force until it had received majority approval in a plebiscite held in the proposed autonomous region and the organization of such a plebiscite was currently underway. The government of Muslim Mindanao would be empowered to legislate, inter alia, on adminstrative organization, revenue sources, planning development, natural resources and protection of the region's cultural heritage. The national Government would remain responsible for the maintenance of law and order, defence and security, fiscal and monetary policy and foreign affairs. She expressed her hope that the forthcoming plebiscite would accurately reflect the political will of the people in the region.

37. Mr. Reshetov had compared the situation in the Philippines with that in his own country and had inquired as to the meaning of the phrase "cultural communities". That term was used in the Constitution of the Philippines, although no precise definition was given. In attempting to define the phrase, she referred to the description of an autonomous region, and said that a "cultural community" was one which shared a common and distinctive heritage as well as common social and economic structures. The Philippines contained several distinct communities, such as lowlanders, highlanders and various religious and cultural groups. The physical differences between those groups were very slight and they shared cultural rather than racial features, hence the term "cultural community" was particularly apt. She thought that it might be of use to other societies in a similar situation.

38. In response to the question on the projects and programmes described in paragraph 32 of the report, she said that they had been launched very recently and it was too early to attempt to assess their impact.

39. Replying to the question on paragraphs 15 to 18 of the report, she said that while no complaints of racial discrimination had been brought before the courts in the past, the heightened awareness of their rights among the indigenous communities had increased the likelihood of such complaints being

lodged. Indeed, the Tasaday tribe had recently petitioned the Supreme Court to prevent publication of claims by two professors from the University of the Philippines that the Tasadays were not authentic cave-dwellers.

40. In reply to the question by Mr. Song Shuhua on paragraph 13 of the report, she said that the offices mentioned received government funding, although an increased level of budgetary support was needed. The offices championed the interests of their respective communities, identified practical projects requiring governmental assistance and undertook relevant research. They were currently involved in attempts to solve problems relating to the ownership of ancestral lands.

41. She emphasized that the government programme to promote equality of opportunity was of very recent origin. Some measures had been taken to facilitate access to the civil service and regional administrations. In response to a demand from representatives of various cultural communities, the requirement to pass written examinations for admission to the civil service had been waived in some cases.

42. She acknowledged that the highlanders had been held in low esteem in the past but it was anticipated that the establishment of new economic and social structures in the country would eradicate any vestiges of that attitude.

43. Referring to questions on paragraph 58 of the report, she said that Muslims were the dominant minority group in the Philippines and held many electoral and governmental positions. None the less, various cultural communities, notably the Cordilleras, were represented in Congress and their representation was expected to increase. The Constitution called for "sectoral representation" of disadvantaged groups such as women, disabled persons and cultural minorities and the Supreme Court was currently deciding on the most appropriate procedure for the appointment of sectoral representatives. There were no legal provisions specifically guaranteeing a certain level of representation for the various cultural communities but efforts were made to ensure that members of those groups sat in the Supreme Court and on the various Constitutional Commissions. The degree of participation was not yet satisfactory but it was hoped that members of cultural minorities would assert their rights both legally and politically in future.

44. Mr. SHAHI thanked the representative of the Philippines for her exhaustive answers to the Committee's questions. He hoped that the following report of the Philippines would contain updated population statistics, as the census figures given in table 1 of the report were many years out of date. He also drew attention to the apparent contradiction between paragraph 11, which stated that Filipinos belonged to "about 110 ethnic tribes" and paragraph 6, which said that they were "from a single racial stock". Furthermore, the population figures given in tables 2 and 3 added up to approximately 7 million while the country's total population was 8 million; he hoped the following report would clarify the situation.

45. Mr. SHERIFIS said that he fully endorsed Mr. Partsch's tribute to Mr. Ingles, who had made a valuable contribution to the Committee's work.

46. Ms. QUISUMBING (Philippines) said that the following report would attempt to answer outstanding questions and would provide updated statistics. The anomaly between the population figures in tables 2 and 3 and the figure given in paragraph 11 might be due to the fact that the Muslim community was not always regarded as an indigenous population. She thanked the Committee for bringing the point to her attention and said that the Government of the Philippines would attempt to clarify the terms used in future reports. She hoped that the eleventh report could supply more precise information. She thanked Mr. Partsch and Mr. Sherifis for the tribute they had paid to Judge Ingles. The judge remained deeply committed to the cause of human rights and she called on Committee members to support him in his continuing endeavours. In conclusion, she said that she would convey the compliments and encouragement of the Committee to the President and Government of the Philippines.

47. The CHAIRMAN congratulated the Philippines on an exceptionally interesting report and thanked Ms. Quisumbing for her outstanding contribution, from which they had all learned a great deal. The whole Committee shared the sentiments expressed by Mr. Partsch with regard to Mr. Ingles. The Committee had thus concluded its consideration of the eighth, ninth and tenth periodic reports of the Philippines (CERD/C/172/Add.17).

Mr. Villarroel and Ms. Quisumbing (Philippines) withdrew.

Eighth periodic report of Senegal (CERD/C/158/Add.3)

At the invitation of the Chairman, Mr. Sene and Mr. Fofana (Senegal) took places at the Committee table.

48. Mr. SENE (Senegal) said that Senegal was a West African country which had long-standing links with Europe and the Arab world. The Senegalese people were endeavouring to construct a progressive, modern society based on respect for human dignity. They were deeply committed to the principle of the freedom of the individual and opposed all forms of prejudice and discrimination. In 1789, when Senegal was under French administration, a list of grievances (*cahier de doléances*) had been sent from the then capital, St. Louis, to the Estates General in France, the body which had drafted the Universal Declaration of the Rights of Man and had proclaimed the principles of liberty, fraternity and equality. In the bicentenary year of that event, Senegal wished to reiterate its commitment to the rule of law and respect for human rights in Africa and throughout the world and to contribute to the establishment of a fair system of international law.

49. Mr. FOFANA (Senegal) said that his country's commitment to the fundamental principles of equality, human rights and freedoms enshrined in all international human rights instruments had been reflected in the establishment by Senegal, on its accession to independence, of a democratic State based on the rule of law and recognition of human rights. Those rights were incorporated in the very body of the Constitution of Senegal, not merely as principles but as rules for daily application.

50. Article 4 and articles 6 to 20 of the Constitution provided specific guarantees in respect of political freedom, trade union freedom, the fundamental rights and freedoms of the human person, freedom of opinion and

religion, the right to own property alone and in association with others, economic, cultural and social rights, and the right of everyone, without distinction as to sex, race or other consideration, to equality before the law.

51. The independence of the judiciary was ensured, and any cases involving human rights violations could be brought before all tribunals, including the Higher Council of the Magistrature and the Supreme Court. The fact that the State was subject to the rule of law was reflected in the provisions of article 79 of the Constitution recognizing the precedence of international treaties and agreements over national laws, and indeed in Senegal's accession to the Convention and adoption of measures to ensure its implementation. There was in fact no form of racial, ethnic or religious discrimination in Senegal.

52. Implementation of article 2 of the Convention was ensured by articles 1 and 7 of the Constitution, which stressed in particular the equality of everyone before the law, without distinction as to origin or race, and article 4, which unreservedly condemned racial, ethnic or religious discrimination, considered a criminal offence punishable by the law; and also by article 283 *bis* of the Penal Code with wording identical to that of the Convention. Regarding the protection of racial groups, there was no group or individual in Senegal requiring such protection. All persons of both sexes enjoyed full and equal rights and status before the law.

53. With regard to the implementation of article 3 of the Convention, since Senegal's accession to the community of nations as a sovereign State, it had played a leading role in the struggle against *apartheid* and the South African régime, as was attested by its active and prominent participation in international, including United Nations, conferences on South Africa and Namibia since 1963 and by the hosting of the meeting between African National Congress and South African leaders in 1987. Senegal had consistently condemned and combated racial segregation, had adopted an official declaration in 1963 vigorously condemning *apartheid*, and was a party to the International Convention on the Suppression and Punishment of the Crime of *Apartheid*.

54. Senegal was also a party to the Convention against Discrimination in Education, the Slavery Convention, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Prevention and Punishment of the Crime of Genocide. In 1963 his country had moreover considered itself as being bound by all conventions previously ratified by France, the former colonial Power.

55. Since 1963 Senegal had terminated all economic and other relations with South Africa. Three decrees adopted in 1963 and amended in 1975 prohibited the import of any goods from South Africa, the use of Senegalese air space or landing rights by South African aircraft, and the entry into Senegal or sojourn on its territory by South African citizens.

56. On becoming a party to the Convention, Senegal had adopted a series of measures to bring its legislation fully into line with article 4 of the Convention. They had been incorporated into Act No. 81.77 of 10 December 1981 amending the Penal Code. Incitement to racial discrimination was covered by

articles 256 bis to 278 of the amended Penal Code, and acts of physical violence based on racial discrimination by articles 295, 296 and 281. Offences under those articles were punishable by severe sentences of terms of imprisonment of from 5 to 20 years and even the death sentence in the case of murder on racial grounds. Media publishing or propagating such incitement were seized and confiscated. Organizations engaged in any activities promoting and inciting racial discrimination were declared illegal and prohibited under articles 3 and 9 of the Constitution, Act No. 79.02 of 4 January 1979 and Act No. 65.40 of 22 May 1965, as amended by Act No. 81.77. Any incitement to racial discrimination by the public authorities was an offence under the amended Penal Code and punishable by a prison sentence and fine.

57. A whole body of legal provisions protected rights under article 5 of the Convention. Articles 5 (a) and (b) were covered by articles 1, 6 and 7 of the Constitution, supplemented, in the case of prejudice to individual rights by government officials, by articles 106 to 178 of the Penal Code, which contained provisions for severe penalties. Article 2 of the Constitution guaranteed political rights and the principle of universal, secret suffrage. Article 3 of the Constitution dealt with political parties, which could be formed freely, enabling all citizens to take part in public life. There were currently 17 legally constituted political parties in Senegal. The Electoral Code, contained in Act No. 76.96 of 21 August 1976, as amended, provided that all Senegalese citizens of both sexes aged 21 years, exercising their civil and political rights and subject to no case of incapacity provided for by the law, were entitled to vote.

58. The right to freedom of movement and residence was covered by article 11 of the Constitution, subject only to the provisions of the law. Under article 4 of Act No. 68.27 of 24 July 1968, as amended, refugees could not be expelled except for reasons of national security or public order. Act No. 65.11 of 4 February 1965, as amended by Act No. 81.19 of 6 May 1981 had removed all restrictions on the right to leave the country. The right to nationality, by birth and by affiliation, was guaranteed in Sénegal, and was extended to include naturalization, the case of foreign women marrying Senegalese citizens and that of infants of unknown parentage found in Senegal. The right to marriage and choice of spouse was guaranteed by the Family Code under Act No. 72.61 of 1972, the law providing for the requirements of free will and consent by both parties. The Family Code also permitted divorce by mutual consent.

59. The right to own property alone as well as in association with others was recognized and guaranteed by article 12 of the Constitution, the system under the ordinary law being for spouses to administer their own estates, and the right to inherit was recognized and guaranteed by the Family Code, as prescribed by articles 399 and 515. The Family Code was very broad in scope with regard to inheritance, applying two systems, the one provided under the ordinary law and the Muslim system. The right to freedom of thought, conscience and religion was guaranteed by articles 1 and 19 of the Constitution, and articles 230 to 233 bis of the Penal Code, providing for repressive measures in the event of violations. Articles 8 and 10 of the Constitution recognized and guaranteed the right to freedom of opinion and expression, and article 9 the right to freedom of peaceful assembly and association. Furthermore, article 812 of Act No. 68.08 of 26 March 1968, as amended, provided for the free formation of associations; any refusal to

accept the registration of an association must be justified and could be the subject of an appeal to the Supreme Court. Freedom of association was also guaranteed by Act No. 78.02 of 29 January 1978 and, with regard to political parties, by Act No. 81.17 of 6 May 1981.

60. Rights under article 5 (e) (i) of the Convention were recognized by article 20 of the Constitution and were covered in detail by the Labour Code contained in Act No. 61.34 of 15 June 1961, as amended, which included the banning of forced labour, provisions concerning employer-employee relations and wage issues. The Constitution also guaranteed the right to form and join trade unions, and to strike; its provisions were supplemented in detail by articles 5, 24, 29 and 85 of the Labour Code.

61. The right to housing was one of the priorities of the Senegalese Government, which had adopted a series of measures on the matter, including Act No. 61.34, articles 105 and 109, on workers' accommodation, and Decree No. 80.467 of 8 May 1980, as amended, concerning subsidized housing. The right to health, medical care, social security and social services was recognized by article 14 of the Constitution. The Social Security Code in Act No. 73.37 of 31 July 1973 provided for a system of health and social protection for Senegalese families, including a number of family benefits. The population also benefited from a wide range of medical and social services established and maintained by the State.

62. Education was amply provided for by the Constitution, which provided for recognition of religious and private schools and by Act No. 71.36 of 3 June 1971, which laid down the basic principles of a national education system consistent with the sociological, social and economic conditions of Senegal. That system included formal pre-school, school and university education, continuing vocational education and literacy instruction, was of a democratic and continuing nature and was directed towards mass general education and training for skilled personnel and producers. Senegal had ratified the Convention against Discrimination in Education. The constitutional right to equal participation in cultural activities was given practical effect in Decree No. 71.573 of 24 May 1971, with the establishment of a standing committee for the organization of cultural events, and in Decree No. 83.1267 of 10 December 1983 establishing the commission responsible for the drafting of the cultural charter of Senegal. Since independence, Senegal had engaged in extensive international cultural co-operation, having signed co-operation agreements with some 60 countries. Its policy of cultural openness was conducive to fostering attitudes of receptiveness to others and so avoiding the mistrust which led to racial, ethnic, or religious discrimination. Finally, there was no specific legislation on the right of access to public places, since the question did not arise in Senegal.

63. With regard to the implementation of article 6 of the Convention, various provisions of the Code of Criminal Procedure supplemented constitutional guarantees by providing effective protection and remedies. Article 76 of that Code gave all persons deeming themselves to be victims of a violation the right to institute legal proceedings and seek just and adequate reparation for

damage suffered. Such requests for reparation could be made to a police officer, an examining magistrate or the tribunal of the Court of Appeal. The plaintiff also had the right to appeal against the decision of the first court examining his case and take it to another court, as provided for by articles 483 and 484 of the Code of Criminal Procedure. In accordance with the fundamental law on the Supreme Court, the latter represented the ultimate recourse in appeals referred to it.

64. The CHAIRMAN requested the representative of Senegal to continue his statement at the following meeting.

The meeting rose at 1.10 p.m.

844th meeting

Wednesday, 16 August 1989
at 3.20 p.m.

Chairman: Mr. LAMPTEY

later: Mr. YUTZIS

CONSIDERATION OF THE REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Eighth periodic report of Senegal (CERD/C/158/Add.3) (concluded)

At the invitation of the Chairman, Mr. Sene and Mr. Fofana (Senegal) resumed their places at the Committee table.

1. The CHAIRMAN invited the delegation of Senegal to continue its introduction of the eighth periodic report (CERD/C/158/Add.3), which it had started at the 843rd meeting.

2. Mr. FOFANA (Senegal), addressing the question of the measures taken to prevent racial discrimination through education, culture, training and information, said that since attaining independence the Republic of Senegal had made dialogue the basis of its international policy. That dialogue had first been given practical expression at the cultural level through the signature of about 70 cultural co-operation agreements with other countries, to promote understanding among people and the elimination of any idea of discrimination against or rejection of others. The expression of that dialogue could also be seen in the area of education and teaching where a large number of specialized post-graduate institutions had been established in widely differing areas of culture, science and sociology. A notable example was the establishment of the Mutants University for dialogue among cultures, with the role of promoting an authentic endogenous development, i.e. one that took into account the values characteristic of each society and called for the active participation of everyone. The university's aim was to give culture a fundamental place in the life of the nation and to ensure that the population played an active role in development. Since its foundation, it had organized a number of meetings around various themes related to dialogue between cultures.

3. Anxious to ensure distortion-free information, in 1979 the Senegalese Government had enacted a law governing press organs and the profession of journalist, which was designed to ensure the objectivity and impartiality of information. It accordingly prohibited all unfair methods such as defamation, unfounded accusations, falsification of documents, distortion of facts, deliberate inaccuracies or the use of deception to obtain information or abuse of anyone's good faith. The law also sought to ensure that journalists practised their profession with dignity and required them to respect the religious, political and philosophical convictions of the public, scrupulously observing the principle of non-discrimination on the grounds of race, ethnic group, sex or national origin and refraining from any act harmful to the morality of the young.

4. With respect to training, in 1983 the Government of Senegal had established the Institute for Human Rights and Peace within the University of Dakar, whose outreach was continent-wide. The Institute's functions included teaching of human rights, basic and advanced training in the human rights field of all technicians and practitioners in the private and public sectors, research and dissemination of information on human rights and on peace, and organization of national and international meetings on the subject. In pursuance of its cultural development policy, Senegal had ratified all the international conventions regarding the protection of cultural property. It had also ratified all the diplomatic and consular conventions negotiated.

5. In conclusion, he stressed that, since its accession to international sovereignty and in the exercise of its irreversible option in favour of the primacy of law, Senegal had spared no effort to maintain and reinforce its public image of a State subject to the rule of law and of a democratic nation. Senegal embraced every opportunity to reaffirm its determination to respect its international commitments, for example the obligation to submit reports to the Committee on the Elimination of Racial Discrimination.

6. Mr. PARTSCH reminded members that during the consideration of the seventh periodic report of Senegal (CERD/C/131/Add.5) the Committee had requested a breakdown of the foreign population according to status: political refugees, economic immigrants and others. The matter was all the more relevant as paragraph 26 of the eighth report (CERD/C/158/Add.3) stated that the country had close to 1 million foreigners, amounting to 20 per cent of the population.

7. The Senegalese authorities apparently gave to the concept of law and order, which admittedly varied from country to country, a very new definition. The maintenance of law and order was usually invoked to justify the restriction of certain rights, whereas in Senegal it was considered as an essential condition of respect for human rights. He would like clarification on that point.

8. On first reading the report, he had thought that literacy (paras. 31 to 37) had no direct relevance to the Convention, but he had revised that first impression when he reflected on the fact that the identity of a nation or a people was revealed not by politicians or by legislators but most often by its writers. Cultural identity, which necessarily involved literacy was, therefore, relevant in a report on the elimination of racial discrimination.

9. Mr. FERRERO COSTA said that he would have liked information on the jobs occupied by the representatives of each of the four ethnic groups listed in paragraph 11 of the report (CERD/C/158/Add.3). He wondered for example, whether members of the Sahel-Sudanese ethnic groups, which seemed to be numerically the largest, constituted the majority in administrative posts.

10. In paragraphs 27 and 28 of the report, reference was made to legislative measures, but nothing was said about the penalties prescribed for acts of racial discrimination committed in violation of the relevant articles of the Constitution and the Penal Code.

11. Lastly, he requested further information on the "functional literacy" mentioned in paragraph 32 of the report, because it did not seem to him that literacy training in the traditional sense of teaching people to read and write and so-called functional literacy were mutually exclusive.

12. Mr. PARTSCH stated for the information of the previous speaker that the seventh periodic report of Senegal (CERD/C/131/Add.5) contained extensive quotations from articles of law and indicated the penalties incurred in case of racial discrimination.

13. The CHAIRMAN, speaking as a member of the Committee, said that he was aware of Senegal's strong commitment to the protection of human rights, which was reflected in many aspects of the daily life of the country. It had therefore been difficult for him to understand the violent clashes that had recently taken place between Mauritanians and Senegalese, causing several deaths. He would be grateful to the delegation of Senegal for an explanation of those events.

14. Mr. FOFANA (Senegal) wished first to remind the Committee that Dakar had been the capital of French West Africa and that on attaining independence Senegal had become a land of welcome. Those two factors combined had facilitated the immigration into Senegal of nationals of nearly all the countries in West and Central Africa. While the letter of the law concerning entry into the territory was strict, in practice there were large numbers of foreigners living among the Senegalese population without residence permits. Consequently, it was difficult to state exactly how many foreigners were refugees and how many were immigrants. The purpose of the censuses taken every 10 years was to count the country's inhabitants; the presence of foreigners was recorded, but no distinction was made as to their status. Nor did those censuses, which were taken for socio-economic purposes, indicate the distribution of the population by occupation.

15. On the question of law and order, the Senegal authorities maintained that they were an essential condition for the upholding of human rights and that enjoyment of the freedom of citizens had to be combined with respect for the law and the rights of others.

16. Concerning literacy, it must be realized that when schooling had become general many Senegalese had been too old to benefit from conventional teaching. With UNESCO's backing, the Government of Senegal had undertaken to teach them to read and write in the national languages, although French was the official language. The literacy programmes were therefore targeted to Senegalese of mature age and had so far given good results.

17. Entry into the civil service did not depend on membership of any particular ethnic group but on objective criteria of competence. Actually, however, the majority of Senegalese regarded themselves as belonging to the Sahel-Sudanese ethnic group.

18. The Constitution set forth general principles which were given effect in laws and regulations. After Senegal had acceded to the Convention, the legislature had enacted in 1982 a law that set out all the penalties incurred in cases of racial discrimination or incitement to racial hatred. Thus, any official guilty of such an act was liable to a prison term and a fine; in cases of voluntary assault and battery or murder, racist motives were an aggravating circumstance.

19. In answer to Mr. Lamptey's question about the recent clashes between Senegalese and Mauritanians, the tension had developed after an incident on 9 April 1989 between cattle-rearers and farmers in Diawara. Cattle had strayed on to land belonging to Senegalese, and Mauritanian cattle-rearers had come to collect them, accompanied by Mauritanian soldiers. Shots had been fired: two Senegalese had been killed and others taken away as hostages. The aggressors had, moreover, committed the humiliating act of having the corpses dragged behind horses. Senegal, anxious not to exacerbate the situation, had refrained from retaliating and merely sent its Minister of the Interior to Mauritania to obtain the release of the hostages and the return of the bodies.

20. Incidents had then followed in eastern Senegal, where the population had attacked Mauritanians on learning that Senegalese had been attacked in Mauritania. The Senegalese authorities had taken measures to ensure the safety of the Mauritanians, who had been protected until their evacuation. It should be stressed that the incidents had claimed more Senegalese victims in Mauritania than Mauritanian victims in Senegal.

21. There were at present between 100,000 and 110,000 persons in Senegal who had been displaced as a result of those occurrences, including some 45,000 to 50,000 Mauritanians who had been expelled from Mauritania because of their colour. In addition, 60,000 to 70,000 Senegalese had been repatriated from Mauritania or had crossed over to the left bank of the Senegal river (Mauritania claimed that the river constituted the border). The Senegalese authorities had launched a registration operation to provide the displaced persons with identity papers so that they could engage in the normal activities of civic life until the problem was settled. A census of the displaced persons would be taken shortly.

22. Mr. SENE (Senegal), supplementing the answers which had just been given, confirmed first of all that, from the ethnic point of view, there was in Senegal a single Sudanese-Sahelian group composed of subgroups which had considerable mutual affinities. The language of the Wolof subgroup was spoken by all the others (Soninké, Mandingue, Serer, Al-poular and Diola). Between the various subgroups there were affinities apparent to one with a good knowledge of ethnology: for example, between the Toukulors in the Al-poular subgroup and the Serers, the linguistic affinity was strengthened by an ancient oath of solidarity, whereby both groups swore never to harm but rather to assist each other. The Government of Senegal had had glossaries compiled to teach the six corresponding languages in the regions where they were most widely spoken.

23. On the subject of negritude, about which there had also been a query, it should not be understood as a rejection of or aloofness from other cultures. It was simply the affirmation of a set of cultural values common to Africans and to persons of African origin. It had been championed by Léopold Sédar Senghor and by Aimé Césaire, a descendant of Africans taken to the American continent. For Léopold Sédar Senghor, negritude was a necessary path towards the civilization of the universe that he advocated and he defined it as an aggressive assertion of brotherhood. Earlier in history, the concept of negritude had emerged from the Pan Africanism of Dubois in the United States and from the musical tradition of jazz and rock. In that connection, he was pleased that in the United States of America, a democratic and multiracial country, the newly appointed Chief of Staff was a black man.

That showed that the struggle of the blacks in that country had not been in vain. Today, the same fight had to be waged on several fronts, of which the principal one was apartheid.

24. In Senegal, negritude was expressed in an outpouring of poetry, both in French and in the national languages, and also, prolifically, in painting, sculpture, the theatre, music, dance, film, etc. A noted part had been played in the celebration of the bicentenary of the French Revolution by one of the greatest Senegalese drummers, Doudou Ndiaye Rose. Many years before, Léopold Sédar Senghor had had the idea of holding a world festival in Dakar, in 1966, to demonstrate what the black peoples had created in various artistic fields. He himself was convinced that negritude, which former President Nkrumah of Ghana had called "African personality", was now a springboard to reach the twenty-first century.

25. Mr. Lamptey had spoken of Senegal's strong commitment to human rights and could bear witness to it, having lived there. That commitment, it should be emphasized, had been expressed in particular through the activities of Presidents Senghor and Diouf to promote the African Charter on Human and Peoples' Rights. Senegal had submitted a preliminary draft of that Charter in Monrovia before it had been adopted in Nairobi. The African Commission on Human and Peoples' Rights had now been set up in Banjul, Gambia, and it had already held several seminars.

26. With respect to the recent distressing events that had occurred between Senegal and Mauritania, he explained that the Senegal valley had been a natural setting for the establishment of ancient ties of civilization and also of blood - for there had been many marriages. Those bonds inherited from the past were an inescapable fact. To strengthen subregional co-operation around the Senegal river, President Senghor had embarked upon the construction of a huge dam, which had been completed by President Diouf.

27. The Diawara incident and the tension between Senegal and Mauritania could not be considered otherwise than in the context of the long-standing fraternal relations between the two countries. President Diouf, for his part, had stated that he wished to avoid excesses and disorderly acts, despite certain strident and erroneous assertions about the border problem between the two countries. An African Mediation Commission had been appointed on the iniative of the OAU; it was headed by the Egyptian President, Hosni Moubarak. President Diouf had assured the Commission of Senegal's unreserved co-operation. He himself was confident that its mediation would throw light on the events and produce fair and lasting solutions. He also thanked the United Nations agencies and intergovernmental bodies for their assistance to Senegal in solving the problem of the refugees and displaced persons in the country.

28. Regarding the presence of foreigners in Senegal, he said that after independence, Senegal had been deeply committed to the idea of a federation and to that of African unity, but unfortunately balkanization had prevailed. Senegal had shown its desire for unity by making a major contribution to the rapprochement between moderate and progressivist countries in Africa that had made possible the creation of the OAU. Holding to that philosophy, Senegal had always given a warm welcome to nationals of its neighbour countries of former French West Africa and of other African countries. It had refused to regard those nationals as refugees. For example, before it had attained independence, many people had come from what was now Guinea Bissau, and

afterwards former Portuguese army personnel had arrived. Generally speaking, the openness shown by Senegal towards the nationals of neighbouring countries and the fraternal welcome they were accorded explained why there was such a large number of foreigners in the country, almost 1 million.

29. In conclusion, he thanked the Chairman and the experts of the Committee for their comments on and questions about the eighth periodic report of Senegal.

30. The CHAIRMAN announced that the Committee had concluded its consideration of the eighth periodic report of Senegal (CERD/C/158/Add.3).

Mr. Sene and Mr. Fofana (Senegal) withdrew.

Ninth and tenth periodic reports of the Federal Republic of Germany (CERD/C/149/Add.21 and CERD/C/172/Add.13)

At the invitation of the President, Mr. Meyer-Ladewig and Mr. Stöcker (Federal Republic of Germany) took places at the Committee table.

31. The CHAIRMAN invited the delegation of the Federal Republic of Germany to answer the comments of Mr. Banton, the rapporteur appointed for the preliminary examination of the ninth (CERD/C/149/Add.21) and tenth (CERD/C/172/Add.13) periodic reports of the Federal Republic of Germany, concerning previously unanswered questions, the written text having been communicated to it in advance by the Rapporteur.

32. Mr. MEYER-LADEWIG (Federal Republic of Germany) after thanking the Committee for giving his delegation the opportunity to have an open dialogue on the ninth (CERD/C/149/Add.21) and tenth (CERD/C/172/Add.13) periodic reports of the Federal Republic of Germany, noted that the questions already mentioned by the Rapporteur responsible for the preliminary consideration of those reports dealt mainly with the legal position and living conditions of foreign workers in the Federal Republic of Germany. Questions on that subject had already been put to the representative of his Government during the consideration of the eighth periodic report (CERD/C/118/Add.19) in New York in 1985. His Government's basic position on those issues was explained in paragraphs 46 and 47 of the tenth report.

33. Briefly, the Government of the Federal Republic of Germany was of the view that the Convention did not establish any obligation to report on issues relating to legislation on aliens. Article 1, paragraph 2 of the Convention stipulated that it "shall not apply to distinctions, exclusions, restrictions or preferences made by a State party to this Convention between citizens and non-citizens". Moreover, paragraph 3 of the same article stipulated that "nothing in this Convention may be interpreted as affecting in any way the legal provisions of States parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality". His Government was already informing other international organizations about the situation of aliens, in accordance with the International Covenant on Civil and Political Rights and the corresponding international instruments of the Council of Europe, in particular the European Social Charter of the European Communities.

34. The Federal Government had dealt with questions concerning aliens in nearly all of its reports. With its tenth report, it had submitted to the Committee the "survey of the policy regarding aliens in the Federal Republic of Germany", produced by the Federal Minister of the Interior. However, the main features as set out in the report before the Committee still applied and the Rapporteur would, he thought, find in it the answer to the questions he had asked about aliens. He wished, however, to make a few additional points.

35. The Federal Republic of Germany was one of the most densely populated countries in the world. Including foreigners, it had a population of about 60 million, giving an average population density of over 240 persons per square kilometre. In 1988, some four and a half million foreigners had been resident in the Federal Republic of Germany, constituting 7.3 per cent of the total population. That figure, however, did not indicate what proportion of the population was made up by foreigners in a given region. In fact, most of the aliens were concentrated in a few regions where they represented more than 20 per cent of the population.

36. Another relevant factor was that a large number of Germans or persons of German origin were arriving every year from the German Democratic Republic and other Eastern and Southern European countries. Most of them were Germans within the meaning of the Federal German Constitution, and as such had the right of abode in the Federal Republic of Germany. Nevertheless, their arrival in the country and their integration frequently posed problems and conflicts similar to those connected with the integration of foreigners, including, for example, language difficulties and a marked lack of familiarity with the social, economic and political circumstances prevailing in the Federal Republic of Germany. During the period 1977 to 1987, some 800,000 German nationals and persons of German origin, including their non-German spouses, had been granted abode in the Federal Republic of Germany.

37. The figures had been rising constantly for some time. Whereas in 1988 some 243,000 persons had been welcomed, the figure for the first half of 1989 had already reached 196,000.

38. The presence of a high proportion of aliens in a country unfortunately led to reservations about those foreigners. The Government was accordingly pursuing a policy towards foreigners which was designed to facilitate the integration of workers who had been living in the country for a long time and of their families, while limiting the further influx of foreign workers into the Federal Republic of Germany and encouraging the voluntary return of aliens to their countries of origin. Foreigners were on the whole well regarded and given friendly treatment by the general public. The Government was doing its best to facilitate first and foremost the integration of young aliens, but it understood that in order to find their identity the latter would have to maintain their relationships with their countries of origin and it recognized their right to be different. At that point he wished to inform Committee members that, in preparation for the opening up of the greater European free market in 1992, the Federal Government had already undertaken, in co-operation with its partners, to harmonize at the European level important parts of its legislation concerning foreigners.

39. He then turned to the questions put in writing by the Rapporteur, Mr. Banton. With reference to the Committee's report on its thirty-second session, 9/ the Rapporteur had asked for additional information on the

demographic composition of the ethnic minorities in the Federal Republic of Germany. As was pointed out in the tenth report in relation to article 2 of the Convention, there were no statistics in the Federal Republic of Germany on the number of German nationals of non-German origin. With regard to the question concerning the Jewish population, he said that at the last population census, taken in 1987, in response to the question about membership of a religious community, about 32,000 persons had described themselves as members of a Jewish religious community. On the other hand, the census questionnaire had not contained any questions the answers to which would have indicated the number of Jewish persons residing in the Federal Republic of Germany who did not profess the Jewish religion.

40. With further reference to the Committee's report, 10/ the rapporteur had asked whether article 3, paragraph 3, of the Basic Law also applied between private persons. The answer was that paragraph 3 did not establish any direct obligations for private persons; its only direct application was between the individual and the State. However, that provision of the Basic Law did have an indirect effect on the civil law since, as a fundamental norm expressing a particular value judgement, it had to be taken into account in interpreting the latter. That system produced satisfactory results and the legislator would take special measures whenever necessary. In answer to Mr. Banton's question as to whether migrant workers were regarded as potential German citizens, he said that foreign workers living in the country were free to decide whether or not they wished to acquire German nationality. The Government was aware that quite a large number of those workers would probably decide to settle in the Federal Republic of Germany for good.

41. The rapporteur had also referred to the fact that the Committee had asked 11/ to have made available to it the study on criminal prosecutions of right-wing extremists between 1978 and 1982. That request had been met in the meantime. Mr. Banton had asked whether article 131 of the Penal Code of the Federal Republic of Germany was applicable to South African propaganda. The answer was that section 131 of the Penal Code was a general provision which made depictions of violence and incitement to racial hatred a criminal offence. Section 131 of the Penal Code was applicable in the case of incitement to racial hatred against a group of persons living in South Africa in the context of propaganda in favour of the South African policy of *apartheid*. In answer to another query from Mr. Banton, who had asked whether the political instruction relating to questions of *apartheid* given in secondary and higher education was effective, he said that he had no hard facts on the subject because it was virtually impossible to establish a causal link between the instruction given in certain areas and the political attitude of the school pupils and school leavers. However, given the wide coverage of human rights in schools, the Federal Government assumed that as a result there would be a lasting effect in promoting tolerance and receptiveness to other cultures in young people. It was in fact the young who were best informed about human rights.

42. In response to the question concerning the percentage of foreign workers who had acquired German citizenship and the number of aliens who had become naturalized, he said first of all that the procedures for acquiring German citizenship were the same as for naturalization. In the last 10 years, the number of foreigners acquiring German nationality had averaged 14,000 per year. During the period 1983 to 1987, for example, 28,000 Yugoslavs, 17,000 Italians, 10,000 Turks and 4,000 Greeks had become German citizens.

43. Another question taken from the report of the Committee 12/ related to the percentage of foreign workers unemployed as compared with German workers. The average annual unemployment rate for foreign workers in 1988 had been 14.7 per cent, whereas the overall rate for the country had been 8.7 per cent. The high unemployment rate among foreign workers was attributable mainly to the fact that most of them were employed as unskilled or semi-skilled workers in the processing industries and the building trade. The unemployment rate in those sectors was also high for low-skilled German workers.

44. In connection with another question asked in the Committee's report, 13/ Mr. Banton had also asked what were the results of the policy of offering incentives to Turkish workers to return to their country. Since 1973, when the Government had put a brake on the recruitment of foreign workers, between 365,000 and 600,000 foreigners had returned every year to their countries of origin. As a consequence of the legislation designed to encourage foreigners to return home, which had come into force on 1 December 1983, it was estimated that 250,000 foreigners would probably return to their countries. Mr. Banton had asked whether the Works Constitution Act protected job-seekers against racial discrimination and how it could be invoked before the courts. He explained that under article 75, paragraph 1 of the Works Constitution Act, the Works Council had to ensure that all employees in a particular place of work were treated fairly and equitably and that no one was subjected to discrimination based on race, religion, nationality or origin, political or trade union activity or sex. That also applied in case of a first job application. In cases of racial discrimination in filling a new post, the Works Council could refuse its approval. If he persisted, the employer must obtain approval from the labour court and in case of racial discrimination that consent was hardly likely to be given. In any event, so far no such case had been brought before the courts.

45. Another question asked in the Committee's report 14/ concerned legal advice and interpreters' fees. In his country everybody - and that included also foreign workers - could avail himself of the services of a legal counsel on payment of the necessary fees. There also existed associations - for example the trade unions, which foreign workers could join - that were authorized to advise their members on questions of labour and social legislation. Foreigners with low incomes were also entitled to legal aid on the same conditions as nationals. Outside of judicial proceedings, they could be accorded assistance to defend their interests on the basis of the Act to Regulate Legal Advice and Representation for Citizens with Low Incomes. In judicial proceedings, they had the same entitlement as German nationals to be exempted in certain cases from court fees and to have their lawyers' fees paid wholly or partly out of public funds.

46. Regarding interpreters' and translators' fees, in proceedings before the criminal courts and the social courts those costs were always met from public funds. In all proceedings before the labour courts, the costs for interpreters provided by the courts did not have to be borne by the unsuccessful party if in that respect reciprocity was guaranteed in the foreign party's country of origin. In other proceedings, in particular ordinary civil proceedings, interpretation costs were normally charged to the unsuccessful party. Furthermore, as a rule, there was no charge for interpreters' and translators' services provided in the course of contacts between foreign workers and employment offices.

47. Mr. Banton had reiterated the request for clarification concerning "extensive measures of promotion and assistance" to help foreign workers and their families 15/ and had asked what measures had been taken to provide mother-tongue teaching for the children of foreigners. In that connection, he referred members to the survey of the treatment of foreigners drawn up by the Federal Government. In addition, the Federal Institute for Employment offered vocational courses specially for foreigners. Lastly, the Federal Government gave financial support to charitable associations that provided social counselling and guidance for foreign employees and their families. Since 1957, the Federation, in collaboration with the Länder, had placed some 500 million Marks at the disposal of seven major welfare associations to finance their work. That support was continuing and 85 per cent of the subsidies granted were currently being used to finance the salaries of social workers who counselled the workers on matters relating to work, material and financial security and health.

48. To promote the integration of adults, they were taught German as a foreign language and could take special language courses tailored to certain occupations. The Language Association for Foreign Employees, based in Mainz, had spent approximately 28 million Marks in 1988 to finance language courses for about 67,000 participants. Since its formation in 1974, the Association had provided assistance for some 560,000 participants. Mother-tongue instruction for workers was provided by the Länder, which were responsible for education within their areas.

49. Turning to other questions that Mr. Banton had cited from the Committee's report, 16/ he would first address the matter of damage paid to the victims of racial discrimination. In accordance with the provisions of article 3, paragraph 3 of the Basic Law, every individual - and that included foreigners - was entitled to equal treatment under the law. The public authorities at all levels were bound to respect that right. Thus, if an individual was denied the exercise of a right accorded him under the law in such a way that the principle of equality was violated, he could take the matter to the courts. There was therefore no need for special provisions on compensation.

50. German civil law did not contain any special rules on compensation in cases of racial discrimination. That did not, however, mean that an individual had to accept any damage caused him by an act of racial discrimination. Under the general provisions of civil law, any one subjected to aggressive or obvious forms of discrimination, which in itself was a criminal offence, was entitled to compensation.

51. Covert forms of discrimination in the private commercial sector were more difficult to stamp out. The Federal Government was attempting through general measures of enlightenment and integration to combat existing prejudices and thus also combat discrimination.

52. A further question put by Mr. Banton and appearing in the Committee's report 17/ concerned the remedies available to foreign workers to defend their rights in case of discrimination by the local authorities. In reply he referred again to paragraph 3 of the Basic Law, which established equal treatment for all. By taking measures which would amount to racial discrimination against a foreigner, the local authorities would be violating the principle of equal treatment guaranteed in the Constitution. In such a case, the foreigner suffering damage could use the normal means of legal

redress. Article 3, paragraph 3 of the Basic Law was binding on every organ of the State which exercised public authority and therefore also applied to local authorities.

53. In answer to another question cited from the report, 18/ namely whether the rights of foreign workers were protected in case of expulsion from the Federal Republic of Germany, he said that when an expulsion order had been issued, the foreigner concerned could lodge an appeal with the next highest authority. If his appeal was rejected, the foreigner could then bring proceedings before the administrative court. Both types of legal remedy generally had the effect of suspending enforcement of the expulsion order until a final and binding decision had been taken on the appeal. Nevertheless, the aliens authority did exceptionally have the right to order the immediate application of the expulsion order when it was in the public interest. Even in such cases, however, the foreigner concerned could appeal to the administrative tribunal and ask it to take a decision. Asylum seekers were, as a matter of principle, allowed to remain in the Federal Republic of Germany until a final and binding decision had been taken on their request for asylum. Speedy deportation was therefore rarely possible except when the asylum seeker had been guilty of serious offences.

54. Citing a further question from the report, 19/ the rapporteur had asked what concrete measures had been taken to educate the lower-level administrative authorities with regard to the provisions of article 7 of the Convention. That question most particularly concerned the authorities of the Länder and the communes, who trained a large proportion of their employees themselves. That training regularly included a consideration of human rights issues, which were also dealt with during in-service training. Workshops and seminars on those subjects were also held for persons working in employment and social welfare offices and for the police. Also involved in the provision of such training were special commissioners or "ombudsmen" for matters relating to aliens, and special agencies also existed to combat racial discrimination and hostility towards foreigners.

55. In conclusion, he said that he had sent the tenth report of the Federal Republic of Germany to the Länder with a request that they observe the requirements of the International Convention on the Elimination of All Forms of Racial Discrimination at all administrative levels. All future periodic reports of the Federal Republic of Germany would also be transmitted to them.

56. Mr. BANTON, speaking as rapporteur entrusted with the preliminary examination of the ninth (CERD/C/149/Add.21) and tenth (CERD/C/172/Add.13) periodic reports of the Federal Republic of Germany noted that the Committee had described that country's eighth periodic report (CERD/C/118/Add.19) as "frank and comprehensive". He regretted that he could not say as much for the ninth report, although the tenth was better.

57. The ninth report left unanswered many important questions raised during the consideration of the eighth report. He was therefore pleased that the representative of the Federal Republic of Germany in his preliminary remarks had filled that gap and glad to note that the Government was now giving priority to the problems brought to its attention. His action in giving to the representative of the Federal Republic of Germany the list of previous questions that had remained unanswered had saved the Committee time.

58. The ninth report was not completely frank either, because, unlike some States which did not hesitate to inform the Committee of their concerns and of the policies that they planned to adopt, the Federal Republic of Germany chose to shelter behind the limitations on States parties obligations stemming from article 1, paragraph 2 of the Convention and to say that many matters relating to foreign workers residing in its territory were not subject to compulsory reporting (CERD/C/149/Add.21, para. 18). Given the large number of foreign children registered in the Federal Republic, that country was giving the impression that it did not take into account the social aspects of the Convention, namely the questions of demography, education and employment to the same extent as it did the purely legal ones.

59. In its eighth report, the Federal Republic had claimed to have fulfilled all the obligations flowing from the Convention in the legislative sphere. He was not convinced that that was the case. Article 6 of the Convention required that all persons subjected to the jurisdiction of the State party should be assured of "effective protection and remedies", and therefore the Committee needed to be informed whether the laws adopted by the Federal Republic had proved effective. For example, by 1958 there had reportedly been 6,000 children born to black fathers serving in the American stationed armed forces in the Federal Republic, and those children would now be aged 30 to 40. One would need to know what those persons thought of the protection provided them by the legislation of the Federal Republic of Germany to repress racial discrimination.

60. The demographic data provided in the ninth report were of little use because they did not indicate where the foreign workers were resident or what their standard of living was. The information on distribution by age and sex was also insufficient. On the other hand, the information provided under article 2 of the Convention in the ninth reports on the Danish, Jewish and Gypsy minorities were very welcome.

61. In its eighth report and again in its ninth periodic report the Federal Republic of Germany had omitted to provide any information on its relations with South Africa because it felt that article 3 of the Convention, even when read in conjunction with the preambular paragraph that dealt with the apartheid policy, did not give rise to any obligation on the State party to report on such matters. It was because there were divergent views on the question, both in and outside the Committee, that it had decided in 1975 [decision 2 (XI)] to invite States parties to report on their relations with the racist régime of South Africa. Within the Committee there would be regret that the Federal Republic of Germany had again decided in its ninth report, as also in its tenth, that it could not respond to that invitation.

62. On a narrow interpretation, article 3 of the Convention required States parties to prevent and eradicate segregation in territories under their jurisdiction. The question therefore arose of how to interpret the word "segregation", which according to the dictionaries meant separation or isolation, especially by discriminatory means. Therefore, in order to determine whether there was segregation it had to be established that there was separation and the means by which it was achieved must be ascertained. The study was all the more complex in that the word "segregation" tended usually to mean morally reprehensible forms of separation. Even if, in the interests of objectivity, one abstained from any moral jugement and adhered to the facts, one was bound to note that in recent years, in several cities of

western Europe, North America and southern Asia, there had been a resurgence of racial and religious conflicts: it was a fact that minorities who lived in neighbourhoods where members of another racial or religious group predominated would move from them to settle in neighbourhoods which were inhabited by other members of their race or religion. In such cases the separation was motivated by fear and not imposed by the State. The apportionment of responsibility could then be open to question and the scientific analysis of segregation usually dealt exclusively with the objective facts of separation. In the Federal Republic of Germany there were residential and other concentrations of foreign workers that in any statistical analysis would fit the pattern of separation or segregation - even self-segregation - which he had just described. That form of segregation was certainly not imposed by the authorities of the Federal Republic of Germany, but article 3 of the Convention nevertheless required the State party to report on it, and the Federal Republic was not fulfilling its obligations if it persisted in simply saying, as it had done in its eighth report, that there was no racial segregation on its territory. The Federal Republic could not, in his view, invoke the exception specified in article 1, paragraph 2, of the Convention, which applied only to distinctions made by the State party and could not be divorced from other provisions of the Convention set forth in article 2, which required a State party to review any policy or official regulation that generated racial discrimination or perpetuated it where it existed and also enjoined upon it to eradicate racial barriers. He thought that the Federal Republic was therefore bound to inform the Committee whether foreign workers were subjected to segregation in work, housing, schooling and so on as a result of actions by employers, municipalities, private citizens or the workers themselves. If so, had those actions amounted to racial discrimination or were there grounds for fearing that racial discrimination might occur in the future?

63. For similar reasons, he felt that the Federal Republic was not entitled to state, as it did in paragraph 18 of its ninth report and paragraph 46 of its tenth, that the employment situation of foreign workers residing in the country was not subject to compulsory reporting, when that obligation was laid down in article 5 of the Convention. The representative of the Federal Republic of Germany was of course right to point out that the Committee was not competent to scrutinize the distinctions that a State party had the power to establish between nationals and non-nationals. Article 5 of the Convention, however, guaranteed the right of everyone to equality before the law in respect of the enjoyment of whatever rights a State recognized in a great variety of fields. As he saw it, equality before the law was a human right with the same priority as the right to non-discrimination. The legal interpretation of that article permitted some dispute, but there was no doubt in his mind that, in the name of sincerity, the Government should say, for example, how it ensured that German employers did not practise any discrimination and how effective were the measures it had taken in that regard. Four years ago, a German journalist had described how he had disguised himself as a Turk and got himself hired alongside Turkish immigrant workers in various German companies, and how he had found that firms seriously breached the most elementary safety regulations. The journalist's account had raised a storm in the country and the official inquiries that followed had revealed that between 60 to 80 per cent of the companies in the Federal Republic who hired out foreign workers were breaking the labour law in one way or another. The authorities of the Federal Republic were apparently very

anxious to rectify any failings in that area and it was therefore all the more disappointing that they had not seen fit to communicate those concerns to the Committee.

64. The Federal Republic of Germany was among the States which had not made the declaration provided for by article 14 of the Convention. He earnestly hoped that the German authorities could be persuaded to study the declarations that had been made by other States and review their position.

65. Without going any further for the present, the Committee should take note of the information provided by the representative of the Federal Republic about the massive influx into the country in recent years of persons coming from Eastern European countries and admitted to the Federal Republic as Germans, which aroused hostility among some German nationals born in the Federal Republic. However, the Committee would perhaps be led one day to inquire into whether the legislation adequately protected those German nationals coming from the East, and to see in particular at that time whether the law of the Federal Republic was effective against the five motives for racial discrimination listed in article 1, paragraph 1 of the Convention: race, colour, descent, national or ethnic origin. Article 3, paragraph 3 of the Basic Law of the Federal Republic (CERD/C/149/Add.21, para. 17) listed six such categories. The citizens of the Federal Republic who were discriminated against because they were perceived as coming from countries in Eastern Europe and not from the Federal Republic should be able to invoke that provision but one would have to wait and see how the courts would decide when faced with cases of that kind.

66. He hoped that the representative of the Federal Republic of Germany would not find his criticisms too harsh. It was because the Federal Republic set itself very high standards that much could be expected from it.

67. Mr. ABOUL-NASR was satisfied with the reports submitted by the Federal Republic of Germany and the answers given by its representative to the questions raised by the rapporteur designated to examine them. It might appear unusual that those questions had been communicated in advance to the representative of the State party, but it would perhaps be well for the Committee to take that procedural question up again later.

68. He agreed with some of the comments made by Mr. Banton but he could not support him on certain points. Mr. Banton had referred to certain problems which were faced by foreign workers in the Federal Republic of Germany, and which were common to all countries of immigration, but he had done so essentially from a humanitarian viewpoint. Mr. Aboul Nasr himself, who had followed as a jurist the proceedings during which the Convention had been drafted, interpreted the provisions of article 1, paragraph 2 and article 3 of the Convention in the same way as the Federal Republic and not as Mr. Banton had done. It seemed clear to him that the Convention did not apply to distinctions made by the authorities in the Federal Republic between nationals and non-nationals. On the other hand, it was the Committee's business to find out whether, in the granting of a work permit or the allocation of housing, for example, or in the grouping of families, distinctions were made between the immigrant workers themselves on the basis of national origin. It would be useful to the Committee to know whether for example, a worker of Polish origin was given more favourable treatment in the Federal Republic than a worker of Turkish or Algerian origin.

69. Regarding the DM 80 billion paid by way of reparations to the Jewish victims of racist persecution under the Hitler régime, as mentioned in paragraph 22 of the tenth periodic report (CERD/C/172/Add.13), he would like to know to whom those payments had been made.

70. Mr. RESHETOV raised a number of points concerning the demographic data given in the ninth and tenth periodic reports of the Federal Republic of Germany that were unclear. In the ninth report (CERD/C/149/Add.21, para. 4), a precise figure was given for the proportion of foreigners in relation to the total population, but three years later that was not the case, as could be seen from the tenth report (CERD/C/172/Add.13, para. 6). The ninth report (para. 4) referred to the "non-German population": he inquired whether that expression referred to foreigners or had a different connotation.

71. The representative of the Federal Republic of Germany had raised the issue of the mass influx of persons from Eastern European countries into the Federal Republic of Germany. The Federal Republic took special measures to assist them, to which he had no objection. But he would like to be certain that those persons who were offered German citizenship did indeed adopt it of their own free will and that their change of nationality was in no way artificial or forced. He also wanted to be sure that those people's right to freedom of movement was duly respected, because he understood that they were sometimes administratively required to settle in certain isolated regions on the pretext that they could be more easily integrated there.

72. Some 5,000 Soviet citizens had left the Soviet Union to settle in the Federal Republic of Germany, where they usually kept their nationality of origin. The Soviet authorities were doing everything in their power to ensure that the movement was as liberal and democractic as possible, but there again he wished to be quite certain that those foreigners in the Federal Republic did not feel as if they were "third class citizens".

73. He was fully satisfied with the information given in the ninth and tenth reports concerning the Danish, Jewish and Gypsy minorities. With respect to the last-named group, paragraph 11 of the ninth periodic report said: "... nor are special statistics kept in relation to the Sinti and Romany gypsies, with the result that, for example, no figures are available as regards school enrolment". He deduced from that statement that the young Gypsies were given no instruction in the Gypsy language, as otherwise their school enrolment would be known. The tenth periodic report (para. 40) on the other hand, referred to a schooling project for improving the learning conditions for Sinti children. Was the integration of those children therefore to be effected in the German language? He also wanted to be certain that the right to freedom of movement was respected in the case of the Gypsy minorities and that they were not forced to settle in specially designated places.

The meeting rose at 5.55 p.m.

845th meeting

Thursday, 17 August 1989
at 10.10 a.m.

Chairman: Mr. LAMPTEY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Ninth and tenth periodic reports of the Federal Republic of Germany (CERD/C/149/Add.21 and CERD/C/172/Add.13) (concluded)

At the invitation of the Chairman, Mr. Meyer-Ladewig and Mr. Fulda took places at the Committee table.

1. Mr. GARVALOV said that the ninth (CERD/C/149/Add.21) and tenth (CERD/C/172/Add.13) reports provided ample information on the implementation of the Convention, especially articles 2 to 7, and that the introductory statement had clarified a number of issues. He agreed with Mr. Banton's interpretation of the applicability of article 1, paragraph 2, of the Convention. Assuming that a foreign worker in the Federal Republic of Germany were denied work on grounds that were definitely racial and the State party concerned did not deem itself bound by article 1, paragraph 2, the fact remained that a case of racial discrimination would exist which would be covered by the overall purpose of the Convention, namely, the total elimination of all forms of racial discrimination.

2. He would appreciate an explanation of why the maintenance of diplomatic relations with South Africa was considered feasible by the Federal Republic of Germany and not contrary to the explicit decision of the Committee.

3. Certain points of detail in the report prompted specific comments. He noted that paragraph 4 of the ninth report included West Berlin in the population of the Federal Republic of Germany. Paragraph 23 of the tenth report referred to publications by two bodies concerning Jews in a State referred to as "Germany"; he presumed that that meant the Federal Republic of Germany. He also assumed that the reference in paragraph 25 of that report to "Jewish citizens" meant citizens of Jewish origin in the Federal Republic of Germany. He noted with interest the "Report on Foreigners Policy and Aliens Law in the Federal Republic of Germany" referred to in paragraph 47 of the tenth report. He considered the information given in paragraph 55 of that report to be somewhat brief. Finally, he asked whether legislation in the Federal Republic of Germany permitted the existence of organizations that expounded racial ideologies.

4. Mr. AHMADU said that his particular concern was with the implementation of article 3. In his view, reports that did not contain a detailed description of steps taken to combat *apartheid* were incomplete. It was his understanding that trade between the Federal Republic of Germany and South Africa had increased overall, by between 12 and 13 per cent, i.e. to a greater extent than South Africa's trade with any other western European country, the United States of America or Canada. The authorities of the Federal Republic of Germany reserved their position on their obligation to report on the implementation of article 3, but the escalation in trade and investment, in addition to the maintenance of diplomatic relations, was a matter for grave

concern. The United Nations General Assembly, the Organization of African Unity, the Commonwealth and other organizations believed that the only remaining weapon against the *apartheid* régime was the imposition of comprehensive, mandatory economic sanctions. It was also his understanding that there had been increased contacts in the field of technology. He wished to know whether, since the visit by the late Mr. Strauss, there had been any other high-level contacts in education or any other field or whether in fact such contacts had decreased. He would also welcome information on any other measures, not necessarily of a legislative nature, that had been taken to discourage the South African *apartheid* régime or even to express dissatisfaction with it.

5. Mr. SONG Shuhua said that the special attention given by the Government of the Federal Republic of Germany to equal opportunities for minorities such as Jews was necessary and commendable. The assistance given by the Government to improve health care, education and economic conditions for groups such as the Gypsies, whose livelihood was in jeopardy, was also welcome, but he wished to know what effects those measures had on the life-styles of such minorities, whose traditional way of life was deeply rooted.

6. The tenth report (CERD/C/172/Add.13) gave a comprehensive description of the situation of the Danish minority, and it was interesting to note in paragraph 14 that the Danish Government covered about half of the expenditure on education. He wished to know the reason for that. He also wished to know, in view of the Danish Government's financial assistance, whether there were in fact any differences in living conditions between the local German population and the Danish minority.

7. Mrs. SADIQ ALI asked how the tripartite intergovernmental commission on regional questions relating to the border between the Federal Republic of Germany, France and Switzerland functioned, and what issues it covered. She wished to know which language was used as the medium of instruction in the border region and whether there was daily migration in the area.

8. Mr. MEYER-LADEWIG (Federal Republic of Germany) said that the Committee's comments and questions would be conveyed to his Government. The most interesting point raised by Mr. Banton concerned the difference in understanding of the scope of the Convention on the subject of *apartheid* and on that of aliens.

9. Mr. FULDA (Federal Republic of Germany) said that nuances in the interpretation of the Convention and States' reporting obligations were also to be seen in the views expressed by members of the Committee. The Federal Republic of Germany had always maintained, and continued to maintain, that its policy towards the racist South African régime was not a matter on which it had to report to the Committee. However, in view of his country's long-standing fruitful co-operation with the Committee, and leaving aside all legal questions, he was prepared to report orally on his Government's policy towards *apartheid*.

10. The Federal Government had always taken an unambiguous and determined stand against *apartheid* and racial discrimination in South Africa. *Apartheid* was one of the most appalling violations of human rights; it could not be reformed but must be abolished. It was his Government's aim to eliminate *apartheid* in all its forms and effects and to bring about a rapid and peaceful

transition to an equitable socio-economic and political order, so that all South African citizens would have a fair chance of determining their own destiny. Peaceful change signified the rejection of force as an instrument of policy and implied the shared responsibility of all South Africans. His Government's policy focused on the absolute necessity of promoting dialogue between all sectors of the population, the prerequisite for which was the release of all political prisoners, and first and foremost Nelson Mandela. The Federal Republic of Germany urged the lifting of the ban on black majority associations in South Africa.

11. At the meeting held in Bonn on 22 June 1989 with the South African Minister of Education, Chancellor Kohl and Foreign Minister Genscher had restated that position. The visit to South Africa by the Minister of Labour and Social Affairs in June 1989 had served the same purpose. There was continuous dialogue between the Federal Government and the representatives of the black majority, which was prevented from engaging in parliamentary action, irrespective of whether its members lived in South Africa or were forced to live abroad. The Federal Government was in contact with churches, labour unions and other representatives of various anti-*apartheid* movements.

12. His Government attached particular importance to the positive action which the Federal Government and other member States of the European Economic Community (EEC) had taken to assist the majority black population. That included the improvements in the social sphere for the black labour force in German and European enterprises obtained as a result of the Code of Conduct for Enterprises adopted by the EEC member States. Furthermore, the decisions taken by the Governments of those States in 1985 and 1986 had signalled to the South African Government that the European Economic Community was not prepared to tolerate permanent violations of human rights in South Africa. However, the Federal Government continued to oppose the imposition of comprehensive mandatory sanctions, which, in its view, would not contribute to a peaceful settlement of the conflicts but would ruin the chances of a peaceful solution.

13. Mr. MEYER-LADEWIG (Federal Republic of Germany), reverting to the question of the scope of the Convention, said that Mr. Banton did not share the opinion of the Federal Government - which, he was gratified to note, was supported by Mr. Aboul-Nasr - on article 1, paragraph 2, of the Convention, and had argued that the provisions of article 5 must in any case be respected. It was true that it was a difficult issue to resolve, but he was convinced that the Convention was not intended to guarantee all the rights provided for in article 5 to citizens and aliens alike, as seemed obvious in the case of the political rights referred to in subparagraph (c), especially the right to vote. No State should be obliged to grant aliens the right to vote; moreover, article 25 of the International Covenant on Civil and Political Rights reserved the right to vote to citizens. Although article 5 (d) (iii) referred to the right to nationality, article 1, paragraphs 2 and 3, were applicable to all the provisions of the Convention, and the wording of those paragraphs made it clear that the State was free to decide on questions of naturalization.

14. Those legal questions aside, he was prepared to provide additional information to that given in his introductory statement in reply to questions not covered by the Convention. In response to Mr. Banton's question whether it was satisfactory that children of foreign parents had no right to citizenship, the question was indeed a pertinent one in regard to children

with foreign mothers, and discussions were currently being held in his country to determine how the legal situation of such children could be improved.

15. In response to Mr. Banton's criticism of the lack of demographic data, he referred the Committee members to pages 8 and 9 of the "Report on Foreigners Policy and Aliens Law in the Federal Republic of Germany" that had been made available to the Committee, adding that the foreign population was very heavily concentrated in certain regions. In some Länder, such as Berlin and Baden-Württemberg, the proportion was higher, while in others, such as Schleswig-Holstein, it was below the country average. More than 20 per cent of the inhabitants of Frankfurt and Offenbach were aliens, and the figures for Munich and Stuttgart were only slightly lower. There were particularly high concentrations of aliens in certain city districts such as Berlin-Kreuzberg. He appreciated the concern that such concentration might lead to the danger of racial hatred, but saw little scope for a practical solution, since foreign workers and their families enjoyed the right to freedom of movement throughout the territory of the Federal Republic and understandably chose to live in places inhabited by their fellow- countrymen. He did not therefore share the view that such a situation amounted to racial segregation under article 3 of the Convention, since the concentration of aliens in certain quarters was the result of a choice made by the aliens themselves and not by the State.

16. In reply to Mr. Banton's question on the situation of migrant workers, as described in the book Lowest of the Low by Günter Wallraf, he said that although the book had aroused great interest and sympathy and had been discussed in the German parliament, it was a mixture of fact and fiction. It was true in so far as it concerned the unlawful hiring out of temporary workers without work permits by unlicenced employment agencies, and in that there had been violations of industrial health and safety regulations as well as of those pertaining to hours of employment. Wallraf had mentioned temporary employment agencies, well known to the employment administration and police, against which investigations had been already pending; the owner of one of them had been sentenced to a prison term of one year and ten months. It was true, as Mr. Banton had said, that a great number of legal proceedings had been instituted. The penal provisions in the law on temporary employment were strict, and provided for imprisonment for up to two years. That was to protect migrant workers without work and residence permits, since they were in particular danger of exploitation by not being able to seek protection from the authorities without fear of measures against themselves. Wallraf's book had led to an increase in the personnel employed in the fight against illegal employment; some Länder had built up special forces. The Federal Government submitted a four-yearly report to the Bundestag about experience with the law on temporary and illegal employment; the last report, which was dated July 1988, stated that, although the number of undetected cases might be high, the competent authorities had grounds for believing that illegal employment of aliens was decreasing. The report showed in detail how the competent authorities and police had increased their efforts, with considerable success. His Government was thus aware of the problem and was dealing with it as efficiently as possible.

17. Mr. Aboul-Nasr had commented on differences in the treatment of aliens. Such differences did exist and were related to the aliens' home countries: persons arriving from certain States were not expelled, even if they had no right to asylum, because they had to fear difficulties if they were repatriated. The question of residence and work permits might, therefore,

with good reason, be resolved differently. On the other hand, there were in principle no differences regarding the possibility of spouses or children entering the country. Where social insurance was concerned, in cases of aliens who returned to their home countries, there might be special bilateral treaties to ensure the continuation of payments in the home country. Otherwise, an alien's contributions were reimbursed and he was thus treated in the same way as a national when social insurance was prematurely terminated.

18. With regard to aliens from EEC member States, they did have special rights, but there was no differential treatment in their situation as workers. The question of special legal provision for aliens from those States had already been discussed in the Committee and there were no grounds for finding a violation of the Convention in that area.

19. He regretted that the report had not been sufficiently clear on the question of compensation for discrimination. In his statement at the previous meeting he had mentioned that, under the Federal Republic's civil law, there was no special provision for compensation in cases of racial discrimination: the general rules applied. But there was a special law concerning the victims of Nazi discrimination and the holocaust: the Federal Compensation Act. Under that Act, the victims had received compensation payments for harm they had suffered, especially personal injury.

20. He had been sympathetic to Mr. Reshetov's views on the treatment of persons coming from the Soviet Union to the Federal Republic of Germany, and he appreciated the liberal attitude of the Soviet Union in that area. Large numbers of people of German origin moved each year from the East European States to the Federal Republic of Germany, and all needed employment and adequate housing. The authorities of the Federal Republic of Germany did their best to integrate them into society, and that task seemed simpler than dealing with aliens in the strict sense of the word, since the people from the Soviet Union and other East European countries were normally well-trained, making vocational training unnecessary.

21. The authorities of the Federal Republic of Germany did not press such persons to change their nationality; often they were German nationals under the Basic Law of the Federal Republic of Germany. Replying to Mr. Reshetov's question on the Federal Republic's definition of nationals and aliens, he said that everyone who was not a national according to article 116 of the Basic Law and the Law on Citizenship was regarded as an alien: non-citizens might be citizens of other States or stateless. The figures he had given at the previous meeting of 4.5 million aliens in the Federal Republic of Germany, making up 7.3 per cent of the total population, were the latest available based on the 1987 census.

22. Mr. Reshetov had expressed concern about freedom of movement for people of German origin coming into the country. It was true that temporary restrictions were necessary to ensure their integration: they were compelled for a time to live in certain areas where they had the best chance of finding jobs. Such action was taken in their own interest; otherwise their situation would be more difficult and they would obtain less help.

23. With regard to the school attendance of the Sinti and Romany Gypsies, there were no precise figures for school enrolment, but Sinti and Romany Gypsies had the same rights and duties as other German nationals: they were

obliged to send their children to a school, and if they did so, no questions were asked about ethnic origin. The figures for attendance were therefore not known. Where Sinti and Romany Gypsies had no fixed place of residence but travelled around, there were particular problems of schooling. The authorities tried to help: he had already referred to mobile school-accompanying aids. Sinti and Romany Gypsies could reside where they chose; they enjoyed the same rights as other nationals. However, since some of them preferred to live together in their mobile homes and caravans, the authorities helped them to find suitable sites. They might live by themselves, or with others in flats or houses if they preferred to do so.

24. In reply to Mr. Garvalov's question concerning the connection between article 1, paragraph 2, and article 5 of the Convention and the possibility of aliens being denied work, he said that, since article 1, paragraph 2, covered the entire Convention, States parties were, in his view, free to decide whether aliens had the right to work, whether they needed permission to work, and other relevant administrative matters. Whether national law allowed developments that might be considered discriminatory was quite another question. Normally it did not, but he considered that such questions did not come within the scope of the Convention.

25. Mr. Garvalov had drawn attention to paragraph 23 of the tenth report, which referred to the Central Welfare Office of the Jews in Germany and the Central Committee of the Jews in Germany. He did not know whether those organizations dealt with the situation in the Federal Republic of Germany or in the German Democratic Republic, but in any case the German authorities had not given them their names: they had chosen them themselves. He agreed that the phrase "Jewish citizens" in paragraph 25 of that report should be amended to read "citizens of Jewish origin".

26. In reply to Mr. Garvalov's question whether legislation in the Federal Republic of Germany permitted the existence of organizations that spread racist ideologies, he said the answer was no. Under article 9, paragraph 2, of the Constitution of the Federal Republic of Germany, organizations working against the Constitution or against the idea of peace among the people and State were forbidden. It was for the competent authorities to decide in specific cases whether organizations had to be forbidden.

27. In reply to the question by Mr. Song Shuhua about the economic development of Jews, he said that he had no information on that point, but was sure that German nationals of Jewish origin did not face any economic difficulties. With regard to the effectiveness of the help given to the Sinti and Romany Gypsies in finding jobs, it was mentioned in paragraph 29 of the tenth report that their traditional trades had become more and more difficult to carry on, so that they needed more help, which was provided by training them for better jobs. Such training was effective, but a large part of the Sinti and Romany population also needed and received social welfare payments.

28. Mr. Song Shuhua had also asked why the Danish State covered part of the cost of education for the Danish minority. That arrangement was covered by bilateral agreements between the Federal Republic of Germany and Denmark; it was in the interest of each State to help its minority in the other country. There were no differences economically between the living conditions of the Danish minority and those of German nationals.

29. Mrs. Sadiq Ali had asked for information on the tripartite intergovernmental border Commission on which the Federal Republic of Germany, France and Switzerland were represented. That body dealt with a wide range of economic and administrative matters, especially environmental problems that transcended frontiers and required close co-operation between the competent authorities of the three countries. The Commission ensured such co-operation on an informal basis between local administrations. There was much daily migration back and forth between the three States, especially between France and the Federal Republic of Germany, and there were no problems in crossing frontiers. Language education in the schools in the border regions normally included the language of the neighbouring countries. The possibility of learning English was broadly provided for in the Federal Republic of Germany, and the same was virtually true of French. The authorities were interested in facilitating exchanges and creating a better understanding of the problems of the neighbouring populations.

30. Mr. RESHETOV said that he had listened with interest to the arguments on article 1, paragraph 2, which had been interpreted in one way by Mr. Banton and Mr. Garvalov and in another by Mr. Aboul-Nasr. He himself supported Mr. Aboul-Nasr's interpretation and thought that the German reading of the article was no doubt correct.

31. He thanked the representative of the Federal Republic of Germany for his replies to the Committee's questions. He had not, however, been fully satisfied by some of them. The official German doctrine of nationality contradicted all international norms and conflicted with the very concept of citizenship, which was based on an individual's allegiance to a particular country. According to the official German doctrine, anyone of German descent living in say, Lesotho or Siberia could now be regarded as a German national. The right to citizenship was a human right and had to be exercised by the individual. According to international law, persons in the Soviet Union with Germanic-sounding names were nationals of the Soviet Union. However, if persons emigrating from the Soviet Union to the Federal Republic of Germany were regarded as German nationals, why were they prevented from moving around the country?

32. He also asked whether Sinti and Romany Gypsies had possibilities for learning their own language in the Federal Republic of Germany.

33. Mr. MEYER-LADEWIG (Federal Republic of Germany) thanked Mr. Reshetov for having interpreted article 1, paragraphs 2 and 3, in much the same way as did the Federal Republic of Germany. With regard to the provisions concerning German citizenship, article 116 of the Basic Law of the Federal Republic of Germany defined a German as a person who possessed German citizenship or who had been admitted to the territory of the German Reich as it existed on 31 December 1937 as a refugee or expellee of German origin or as a spouse or descendant of such a person. The people who came to the Federal Republic of Germany from the Soviet Union and other countries wanted to be German citizens and live like them; they had declared their will to do so by coming to the Federal Republic of Germany. Therefore, that provision of the Basic Law was not detrimental but favourable to them.

34. He could add nothing further on freedom of movement. It would be preferable if the temporary administrative measures he had mentioned were not necessary, but the large number of resettlers had forced the Government to introduce some regulations, once again in favour of the persons involved, to enable them to be integrated more quickly into life in the Federal Republic of Germany.

35. He was afraid he could give no information on teaching of the Gypsy languages, but such information would be included in his country's next report.

36. Mr. FERRERO COSTA, after thanking the representative of the Federal Republic of Germany for his comprehensive answers to the Committee, said that he did not share the Government's interpretation of article 3 of the Convention. He supported Mr. Banton and thanked him for his comments; States parties to the Convention should ensure that their foreign policies were consistent with the provisions of the Convention, and should not have diplomatic or commercial relations with South Africa.

37. Mr. SHAHI said it was was known that the Federal Republic of Germany had assumed an obligation to pay reparations to Israel on account of the persecutions of Jews by the Nazi régime. Since the Sinti and Romany Gypsies had been persecuted in the same way, had any consideration been given to compensating the survivors of those groups, who had been residing in Germany for a long time?

38. Mr. MEYER-LADEWIG (Federal Republic of Germany) said it was true that the Sinti and Romany Gypsies had been persecuted for racial reasons under the Nazi régime and, like all people who had suffered during that time, they had the right to claim compensation under the relevant legislation. They had done so and compensation had been paid to them in large amounts.

39. Mr. ABOUL-NASR asked whether the next report of the Federal Republic of Germany could specify the amounts of compensation given to Gypsies, Slavs and all those who had suffered perseuction under the Nazis, so that the Committee could see whether there had been equality of treatment.

40. The CHAIRMAN said that the Committee had concluded its consideration of the ninth (CERD/C/149/Add.21) and tenth (CERD/C/172/Add.13) periodic reports of the Federal Republic of Germany.

Mr. Meyer-Ladewig and Mr. Fulda (Federal Republic of Germany) withdrew.

Eighth periodic report of Cuba (CERD/C/158/Add.4)

At the invitation of the Chairman, Ms. Ferriol Echevarria (Cuba) took a place at the Committee table.

41. Ms. FERRIOL ECHEVARRIA (Cuba) said that, as the Committee knew, Cuba had been regularly fulfilling its obligation to submit periodic reports, which was obvious evidence of the seriousness with which it took its responsibilities under the Convention.

42. There had been an error in Cuba's eighth periodic report (CERD/C/158/Add.4) concerning the number of hospitals: there were 264 hospitals in the country and not 1,706, as had been stated in paragraph 98.

43. Cuba's eighth report presented up-to-date information on the legislative, judicial, administrative and other measures adopted in Cuba since the submission of the seventh report (CERD/C/131/Add.4). It had been prepared in conformity with the revised guidelines prepared by the Committee (CERD/C/70/Rev.1) and gave details on legislation in areas such as the rights of the family, labour legislation, higher education and the rights of the citizen, at the same time giving information relating to articles 2 to 7 of the Convention. The various measures described in the report were inspired by the principles enshrined in the Cuban Constitution, which guaranteed the enjoyment of all human rights and fundamental freedoms without any kind of discrimination.

44. Discrimination of any kind, including that based on race, was alien to the very philosophy of the Cuban Revolution, as could be seen clearly in the economic and social changes that had taken place in the country since 1959. The provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of the Crime of *Apartheid* had been incorporated into Cuba's national legislation and supplemented by other norms.

45. At the international level, Cuba had consistently demonstrated its firm determination to fight against imperialism, colonialism and neo-colonialism and continued to manifest its solidarity with the oppressed peoples of southern Africa, Namibia and the Arab territories occupied by Israel, including Palestine. Cuba fully supported the national liberation movements fighting against racial discrimination, zionism and *apartheid*.

46. She drew attention to the information provided in the report on new legislation relating to the Labour Code, the Associations Act, and the Social Prevention and Care Commissions Act.

47. With the entry into force, in April 1988, of the new Penal Code, in which many offences had been decriminalized and punishment other than deprivation of liberty had been introduced in 80 per cent of the criminal cases with a view to reducing the prison population, 20,000 prisoners had been released and the terms of a further 12,000 had been reduced. The changes in the Penal Code had eliminated the criminal character of certain acts presenting little danger but had also increased the fines for some offences and the severity of punishment for particular crimes, including attacks against the authorities and their agents in the exercise of their duties, the improper use of financial and material resources, abuse of office, misappropriation and bribery.

48. A new kind of penalty had been introduced, that of correctional labour, which replaced deprivation of freedom. As a result, courts would not be obliged to make a convicted person discontinue the practice of his profession or separate him from his family during the period he was serving his sentence.

49. Cuba had taken part in 1988 in the quadripartite talks on the situation in south-western Africa which had concluded with the signing on 22 December 1988 in New York by the People's Republic of Angola, the Republic of Cuba and the Republic of South Africa of the tripartite agreement ending the conflict in south-western Africa and promoting the independence of Namibia. Those events would be described in detail in the ninth report of Cuba, to be submitted during 1989.

50. With regard to questions raised during the consideration of the seventh report in 1986, she wished to provide the following additional information. Mr. Song Shuhua had requested statistics on the composition of the Cuban population. Her delegation appreciated why members wished to have that kind of information but thought that there should be understanding between the two parties to the examination of the report, since the provision of statistics of that type would not promote the equality and might even increase the division between ethnic groups.

51. As the Committee had been informed, there was no study of the demographic composition of Cuban society, which was a mixture of different ethnic groups. The elimination of ethnic barriers in the social structure of Cuba was enshrined in its legislation and for the past 30 years, Cubans had been educated in the principles of anti-racism, equality and human solidarity. The results of that teaching were to be found not only in Cuba but also in the multi-faceted assistance the Cuban people gave to other countries, particularly in Africa, Asia and Latin America.

52. The consistent application of those principles, demonstrated dynamically in the daily life of Cuban society, constituted a singular example of her country's active commitment to the equitable promotion of all social sectors of the population irrespective of their social or ethnic origin. That line of action stemmed not only from the obligation to comply with the most elementary form of social justice and the philosophy of the Cuban Revolution but was also a prerequisite for the attainment of the economic and social development sought by the people of Cuba.

53. With regard to the access to employment and public functions, the approach adopted was entirely multiracial. In those conditions, it would not be possible to carry out a census of the various ethnic groups in Cuba and such a census would serve no useful purpose.

54. As to the request by Mr. Aboul-Nasr for more information concerning the definition of "anti-social acts" referred to in article 238 (2) of the Penal Code in force in 1976, she said that they were acts which ran counter to the legal order established in a given period or which were contrary to the customs adopted by a given society at a given moment, in other words, they were acts which ran counter to established standards and national legislation at a given moment which judges took into account in determining a penalty.

55. With regard to the question by Mr. Yutzis whether Cuba was prepared to recognize the Committee's competence in accordance with article 14 of the Convention, Cuba was one of the States which had consistently supported the work of the Committee and, consequently, had implemented the various resolutions adopted both by the General Assembly and the Commission on Human Rights. Cuba had complied with the provisions of article 8, paragraph 6, under which States parties were responsible for the expenses of the members of the Committee while they were in performance of Committee duties. Therefore, Cuba's support and the importance it attached to the Committee's work were evident. Her Government, which was constantly revising its national legislation and bringing it into line with international standards in the light of existing circumstances, was currently conducting a study with the participation of various national bodies on the possibility of making the declaration under article 14. When the decision had been taken, her Government would communicate it to the Committee in due course.

56. With reference to the question concerning article 349 of the Penal Code in force in 1986, she said that it established penalties for an offence against the right of equality. Furthermore, article 128 of the Penal Code characterized the crime of apartheid as an offence and established corresponding fines to be imposed on persons who committed such an offence. It should be noted that no one had been charged with the commission of that offence and, therefore, it had not been necessary to impose the penalties established. A question had also been raised about the instruction given to students, police officers and members of the legal profession relating to the concept of human rights. From a very early age, the Cuban child received basic instruction in the equality of human beings, respect for human dignity, the indivisibility and interdependence of civil and political rights and economic, social and cultural rights, the right to development as an inalienable right, and the provisions of General Assembly resolution 32/130 of 16 December 1977 as a new approach to the question of human rights within the United Nations system. In other words, the Cuban population had access to and was acquainted with the international instruments adopted in the field of human rights.

57. The Government and relevant national institutions had been concerned with the organization of training courses, post-graduate studies, seminars and national and international symposia in order to facilitate and improve the training of persons responsible for ensuring compliance with the law and members of the legal profession so that they would be acquainted with recent developments concerning international legislation in that field. By way of example, she said that the findings and decisions adopted during the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from 26 August to 6 September 1985, had been studied by all officials concerned with the subject.

58. In conclusion she said that human rights and, consequently, racial discrimination were also the subject of university and post-graduate papers in various educational institutions of her country.

59. Mrs. SADIQ ALI, speaking as rapporteur entrusted with the preliminary examination of the eighth periodic report (CERD/C/158/Add.4) of Cuba, said that while the report contained a wealth of information in many areas, particularly in health care, education and the distribution of income, no reply had been furnished concerning the demographic composition of the population. She would like to know whether any demographic data based on people of Spanish origin and those from Africa or mixed races existed. She also asked whether the only language spoken was Spanish and whether Creole was also a language.

60. The third congress of the Cuban Communist Party had admitted in 1988 that racial minorities were under-represented in responsible government and party positions at all levels. It had said that about 18 per cent of the full and alternate members of the Central Committee of the Party were considered to be black or of mixed race while the minorities appeared to constitute roughly half the general population. She would like to know whether that was an index of lower educational qualifications. Cuban blacks, it was reliably reported, generally received lower incomes, made up a greater percentage of prisoners and suffered from poor health. She would welcome clarification in that regard.

61. Cuba's role in connection with article 3 was most commendable. In that connection, she noted that it had been in the vanguard of the struggle against racism and colonialism at the international level.

62. The statement in paragraph 58 of the report that "there were no reasons for the occurrence of the offences of incitement or propaganda or the establishment of organizations disseminating ideas based on racial superiority, as a consequence of the outright elimination of poverty and ignorance, unemployment, social parasitism, exploitation, oppression and discrimination of any kind" seemed to point to the existence of an ideal society, but nowhere in the world was that true. Such provisions as Cuba had taken under article 4 condemning all practices which might seek to revive discrimination were necessary, bearing in mind that discrimination sometimes manifested itself indirectly. Moreover, circumstances might change in a society and it was always more prudent to be prepared with adequate legislation for any eventuality, as Cuba was.

63. With regard to article 5, there had been improvements in prison conditions and concessions had been granted to the Catholic Church. The Government had approved a revision of the Penal Code, introducing some improvements. Amnesty International and the International Committee of the Red Cross, which had been allowed to visit prisons in Cuba in 1988, had severely criticized the inhumane conditions prevailing in the so-called punishment cells of several prisons. Eight thousand criminal offenders had been released in the first half of 1988, for which the Government was to be commended.

64. Approximately 900 current and former political prisoners and their families had been allowed to emigrate to the United States in 1988. She asked whether they would be able to visit Cuba.

65. She would welcome information on the work of the group of the Commission on Human Rights which had visited Cuba. It had been stated that over 1,500 persons had been allowed to testify before the group.

66. In a book entitled *Fidel y la religión* and at the third congress of the Cuban Communist Party, President Castro had admitted that discrimination existed against Cuban citizens who practised religion. The Government and party were working to eliminate religious discrimination. She would welcome further information on that point. She would like to know whether Cubans were permitted to choose and change their employment, in accordance with the Discrimination (Employment and Occupation) Convention, 1958 (Convention No. 111) of the International Labour Organisation.

67. It was gratifying to note in paragraph 104 of the report that the topics contained in article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination had been the subject of post-graduate and research courses. She also noted the statement in paragraph 116 that the Cuban United Nations Association had continued to celebrate the International Day for the Elimination of Racial Discrimination. She would like to know what the themes of research were and how the International Day was observed.

68. *Mr. BESHIR* noted that Cuba had consistently demonstrated its determination in the fight against racism and *apartheid* at the national and international levels.

69. With regard to the statement by the representative of Cuba, concerning the illegal abuse of office by certain groups, he would like to know what measures had been taken to curb such abuse since the adoption of the new Penal Code.

70. On paragraph 40 of the report (CERD/C/158/Add.4), he asked how socialist legality was integrated into the socialist concept and applied.

71. Referring to paragraph 79, he would like to know what actions or measures had been taken in the area in question.

72. Lastly, it was known that Cuba was involved in an ethnic conflict in Ethiopia, and he asked whether that was compatible with Cuba's concept of human rights.

73. Mr. PARTSCH, referring to paragraphs 58 and 59 of the report (CERD/C/158/Add.4), said he thought that the former paragraph was superfluous and even misleading.

74. He would like to know what were the requirements for access to higher education.

75. Ms. FERRIOL ECHEVARRIA (Cuba) said, with regard to the request to provide information on the demographic composition of Cuba, that it was difficult to do so, since Cuba had a multiracial population as a result of the colonial era.

76. With regard to the question of language, the only language used was Spanish and no dialect was spoken in Cuba.

77. With respect to the statement by Mrs. Sadiq Ali that the third congress of the Cuban Communist Party had recognized the existence of national minorities in Cuba, she disagreed with the assessment given. In presenting the seventh periodic report of Cuba, the representative of Cuba had said that the Congress had stressed the need to ensure the adequate representation of women in accordance with the important contribution made by them in Cuba. It had also been said that, because of the multiracial composition of the population, not all groups were represented in party positions. That did not mean that they were national minorities. Through social, economic and political measures, the Cuban population had become homogeneous in nature.

78. Her Government made consistent efforts to ensure the education of all Cubans, a right guaranteed under article 42 of the Constitution.

79. Persons who discriminated against others were punished in accordance with the provisions of article 349 of the Penal Code.

80. She said that there was no discrimination with regard to employment and salary levels were determined solely on the basis of skills and qualifications in accordance with the Discrimination (Employment and Occupation) Convention, 1958 (Convention No. 111), of the International Labour Organisation, which had been ratified by Cuba.

81. She agreed with Mrs. Sadiq Ali that Cuba had a disproportionate number of black prisoners. Despite the progress brought about by the revolution, blacks remained the poorest sector of Cuban society and crime was always prevalent in

such communities. Consequently, the high percentage of black prisoners did not reflect racial discrimination but was the product of social conditions which Cuba was endeavouring to improve.

82. Referring to the comments on paragraph 58 of the report, she said that while Cuba was not a perfect society, the remarkable nature of its achievements had been recognized by various international bodies.

83. While the crime of apartheid was punishable under Cuban law, no cases of that crime had ever been brought before the courts; hence the prescribed penalty had never been applied.

84. With regard to associations, she drew attention to the Associations Act in Cuba which governed the establishment of associations and the aims pursued in line with the provisions of the Constitution, and the Penal Code laid down penalties for violations of the Associations Act. More than 1,600 different associations were registered in the country.

85. Mrs. Sadiq Ali had referred to recent visits to Cuba by Amnesty International, the International Committee of the Red Cross and a mission of the Commission on Human Rights and their criticism of conditions in some Cuban prisons. She did not believe that the Committee on the Elimination of Racial Discrimination was the appropriate forum to discuss that matter but, as Cuba attached great importance to dialogue with the Committee, she would make a few comments. Following the introduction of Cuba's new Penal Code, 20,000 prisoners had been released and the sentences of 12,000 others reduced. In Cuba there were no political prisoners or prisoners of conscience; no one was imprisoned for his ideas but for having committed a crime specified in the Penal Code, and there were, therefore, counter-revolutionary prisoners. The Penal Code provided for obligatory prison terms for certain offences, including counter-revolutionary activities, but counter-revolutionaries were not considered to be political prisoners. The number of counter-revolutionaries imprisoned in Cuba had fallen from 458 in March 1988 to 121 in December of the same year. The Cuban penitentiary system was based on respect for human dignity and all prisoners had employment, medical care and the right to receive visits.

86. Mrs. Sadiq Ali had asked whether those who had been allowed to emigrate to the United States of America were permitted to revisit Cuba. That question had to be seen in the political and historical context of the outright hostility towards Cuba on the part of the United States. Experience had shown the Cuban revolution to be an irreversible process whose achievements were unquestionable. Those who sought to leave the country did not share the aims of the revolution being carried out in the country and did so in search of a high standard of living in the consumer society and, therefore, had no wish to return. The vast majority of Cuban emigrants would like to settle in the United States. Under current Cuban emigration law, in addition to domestic formalities and procedures, the emigrant needed an entry visa from the receiving country. The United States authorities often raised difficulties in granting entry visas while encouraging illegal emigration, thereby making the work of the Cuban authorities more difficult. There had been various waves of migration to the United States at specific periods during the revolutionary process. The reasons had differed; each wave was, therefore, distinct. Those who had emigrated in the 1960s had revisited the country on many occasions;

however, permission to return had been refused those who had emigrated in the 1980s because of their anti-revolutionary feelings, although some exceptions had been made on humanitarian grounds.

87. The report (E/CN.4/1989/46) of the mission of the Commission on Human Rights which had visited Cuba in September 1988 in response to the invitation extended to the Commission by the sovereign Government of Cuba had been discussed publicly in the Commission. It was for that reason that she did not see the need to reopen the discussion of the report in the Committee; furthermore, the Committee had no mandate to do so. The visit had been unprecedented and had shown the Cuban Government's concern for the promotion and protection of human rights and fundamental freedoms. The Commission on Human Rights had thanked the Cuban Government for its continued co-operation with the United Nations. The mission had helped to counter the anti-Cuban propaganda fostered by the Government of the United States. In addition to the economic blockade, the attempts to assassinate Cuban leaders and the military and economic attacks, that propaganda was currently being pursued on an ideological level.

88. Concerning the question of religious discrimination, she took issue with Mrs. Sadiq Ali's statement that concessions had been made to the Roman Catholic Church. In the early days of the revolution there had been political tensions between the Church and the State because the Church had belonged to the rich, the bourgeois of the country, who had tried to use it against the interests of the revolution. That had created some resentment against it and some problems had arisen which had now been resolved through the dialogue which had taken place between the Church and the State. Relations had improved and were continuing to do so, as was borne out by the book *Fidel y la religión*, and positive results had been achieved. The largest religion in Cuba was founded on hagiolatry and was a syncretic form of Afro-Christianity, while Roman Catholics accounted for 15 per cent of the population. Religion had been the source of some problems in Cuba, such as the refusal by conscientious objectors to perform military service, although alternative forms of service were now open to them. Cuba was an underdeveloped country and it was making every effort to guarantee the people's social and economic well-being, and that was the main focus of the mass media; the space left for religious propaganda was thus reduced. She was happy to say that substantial progress was being made and that the problems of the past were being currently eliminated through dialogue.

89. Referring to another question raised by Mrs. Sadiq Ali, she said that although there were no specific courses on the concept of human rights, the entire Cuban educational system aimed to promote respect for human rights and fundamental freedoms and to heighten awareness of the interdependence of economic, social, cultural, civil and political rights. She drew attention to the existence of postgraduate and research courses on various international human rights instruments.

90. She reminded members of the Committee of Cuba's problems resulting from the economic blockade instigated by the United States. None the less, the country had faced that and other difficulties and had succeeded in making immense progress for the benefit of its people. The scale of its achievement since the revolution was shown *inter alia* by the huge increase in the number of doctors, nurses, hospitals, nurseries, primary and secondary schools and books published, the rise in its gross national product and the expansion of its transport network.

READEX FICHE

91. In response to the question on the inclusion of the offence of misuse of authority in the new Penal Code, she said that past abuses on the part of some government employees had created the need for such a provision. The country's socialist legal system meant that laws and regulations could be adapted to meet changing requirements and duly ratified international instruments could be incorporated into the country's legislation.

92. In response to the questions on education and vocational training, she said that primary and secondary school pupils who were interested in a particular occupation, such as medicine or engineering, had the opportunity of joining a club to develop their interest. Entry to university was on the basis of examination results alone and there was no discrimination of any kind. Training courses were available to those who did not obtain the required entry qualifications for university.

93. Concerning the questions on Cuba's participation in ethnic conflicts in Ethiopia and Angola, she said that the Cuban intervention was not contrary to the International Convention on the Elimination of All Forms of Racial Discrimination, as Cuba had merely responded to legitimate requests from the Ethiopian and Angolan Governments. Those and all other questions would be conveyed to the Government of Cuba and more ample details would be provided in the ninth report.

The meeting rose at 1 p.m.

846th meeting

Thursday, 17 August 1989
at 3.20 p.m.

Chairman: Mr. LAMPTEY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (*continued*)

Eighth periodic report of Cuba (CERD/C/158/Add.4) (*concluded*)

At the invitation of the Chairman, Ms. Ferriol Echevarria (Cuba) resumed her place at the Committee table.

1. Mrs. SADIQ ALI noted that the new Cuban Penal Code provided for the penalization of public officials guilty of discrimination. She would like Cuba's next report to provide examples of penalties thus applied to officials.

2. Mr. GARVALOV was of the same opinion as Mr. Partsch: Cuba unquestionably implemented the provisions of article 4 of the Convention but its next periodic report should provide the Committee with further information on the implementation of the provisions of article 6. The Cuban authorities and the representative of Cuba should in any case be congratulated on having provided the Committee with a considerable volume of specific information evidencing Cuba's determination to implement as many as possible of the Convention's provisions.

3. Ms. FERRIOL ECHEVARRIA (Cuba) stated for the information of Mrs. Sadiq Ali that the new Cuban Penal Code provided for the punishment of public officials for abuse of authority in the performance of their duties but not for acts of racial discrimination. Cuba's next periodic report would provide details and examples of the implementation of the new Penal Code.

4. The CHAIRMAN, after thanking the representative of Cuba for taking part in the work of the Committee, said that the Committee had thus completed its consideration of Cuba's eighth periodic report.

Ms. Ferriol Echevarria (Cuba) withdrew.

Fifth periodic report of Luxembourg (CERD/C/155/Add.2)

At the invitation of the Chairman, Mr. Duhr (Luxembourg) took a place at the Committee table.

5. Mr. DUHR (Luxembourg) presented his country's fifth periodic report (CERD/C/155/Add.2). The report was of course already two years old; he had brought with him data, which he was prepared to read to the Committee or to transmit to it in writing, allowing the report to be updated.

6. Mr. BANTON, speaking as rapporteur entrusted with the preliminary examination of the fifth periodic report of Luxembourg, said that Luxembourg's most recent report further confirmed the scrupulous manner in which the provisions of the Convention were implemented there. Luxembourg had, moreover, replied to all the questions it had been asked, with one exception. Did it intend to make the declaration provided for under article 14 of the

Convention? He sincerely hoped that the Luxembourg authorities would study the declarations that had already been made and come to the conclusion that Luxembourg was able to join the States parties from which they emanated.

7. He considered that in cases such as that of Luxembourg, where the Committee could be confident that the State party had the situation fully under control, it could merely request it to submit its next periodic report in the form of an update.

8. Mr. RESHETOV supported Mr. Banton's suggestion. Luxembourg, like other small European countries such as Iceland, resolutely observed human rights, a fact which did not, however, prevent it from adopting the appropriate legislative measures. He noted a certain contradiction between paragraph 15 of the fifth periodic report (CERD/C/155/Add.2), which indicated that the Luxembourg courts experienced no difficulty in directly applying international norms and the provisions of international treaties, particularly when domestic law contained similar principles, and paragraph 17 which stated that the question of the direct applicability of the provisions of the Convention had not yet arisen in the Grand Duchy. Could the representative of Luxembourg clarify that point?

9. He was satisfied with the clear and concise indications given in paragraph 24 regarding the attitude of Luxembourg towards aliens, who genuinely enjoyed the same rights within the country as Luxembourg citizens.

10. Mr. PARTSCH noted that in paragraph 5 of the fifth periodic report (CERD/C/155/Add.2) it was superfluous to state that the European Court of Human Rights enjoyed competence "without special agreement" in regard to all matters concerning the interpretation and application of the Convention, since in that respect the court automatically enjoyed competence as a matter of law. However, his observation was purely formal.

11. Paragraph 38 raised the question of the right of aliens to vote. In the current debate on that matter in Luxembourg, was a distinction made between municipal elections, which were important in a country where the municipalities possessed considerable autonomy, and national elections?

12. Mr. SHERIFIS said that, like his colleagues, he was satisfied with the fifth periodic report of Luxembourg (CERD/C/155/Add.2) and with the constructive dialogue that it was possible to conduct with the State party.

13. He also expressed his satisfaction with the particulars given in paragraph 34 of the restrictive measures taken against South Africa. Could the representative of Luxembourg say whether other measures of that kind had been adopted since 1987? Did Luxembourg maintain diplomatic and trade relations with South Africa?

14. Like Mr. Banton, he hoped that it was the intention of Luxembourg, where human rights standards were so high, to make the declaration provided for under article 14 of the Convention.

15. Mr. SONG Shuhua also found that the clear and precise fifth report (CERD/C/155/Add.2) provided the Committee with most of the information requested.

16. In connection with paragraph 20 of the report, which stated that aliens in Luxembourg constituted about 28 per cent of the total population, paragraph 24, which said that foreigners did not enjoy equality with Luxembourg citizens in respect of access to public office, and paragraph 39, which mentioned the need to maintain the traditional political balance, he inquired whether aliens currently occupied positions of public office, and if so, what percentage they constituted.

17. Mr. DUHR (Luxembourg) said that he had noted the importance attached by the Committee to States parties making the declaration provided for under article 14 of the Convention. He would not fail to convey that fact to the Government of Luxembourg and hoped that it would take a favourable view as to the desirability of making the declaration.

18. In reply to Mr. Reshetov, he wished to make it clear that in Luxembourg international conventions came directly within the domestic sphere of application and could be invoked before the courts without the slightest difficulty. With regard to the voting rights of aliens, it might be remembered that a European Economic Community directive which would give the right to vote to all nationals of the Community's member countries, whatever their place of residence within the Community, was under consideration. That provision entailed no difficulty for Luxembourg except that the country was in a special situation because aliens constituted nearly a third of the total population. Furthermore, the aliens were mainly concentrated in a few urban areas. It had yet to be decided whether the right to vote would be solely passive or whether it would be active, i.e. include eligibility for office. Regarding any distinction between municipal and national elections, he informed the Committee that an act dated 13 December 1988 stipulated that in communes where aliens constituted more than 20 per cent of the population they would henceforth be represented on a consultative council. That was perhaps the first step towards a solution to the problem. Hitherto, Luxembourg had never been faced with the problems posed by racist electoral campaigns, even during the most recent elections in June 1989, when parties tainted with racism had polled only 3 per cent of the vote. However, if aliens were one day to be placed on exactly the same footing as Luxembourg citizens and enjoy all the rights hitherto restricted to Luxembourg nationals, there would perhaps be hostile reactions.

19. With regard to the European Court of Human Rights, mentioned in paragraph 5 of the report, since its publication a number of suits had been brought before the Court concerning, in particular, the right of everyone to a fair trial. In every case the Convention had been duly observed; he would annex the relevant legal decisions to the update to be transmitted to the Committee.

20. Regarding the question raised by Mr. Sherifis, he was unaware whether further restrictive measures had been adopted against South Africa since November 1987. The Government of Luxembourg would provide the Committee with particulars on the matter. Luxembourg had not broken off diplomatic relations with South Africa, and favoured dialogue rather than confrontation. However, trade relations were strongly discouraged and the volume of trade, if indeed there was any, must be minute.

21. In reply to Mr. Song Shuhua, he said that aliens could be employed by public bodies, although they could not acquire the status of civil servants. For example, at the Ministry of Foreign Affairs there were currently 45 aliens, constituting 25 per cent of the total staff. In that sphere, Luxembourg's attitude was perfectly in keeping with the spirit and letter of the Convention.

22. Mr. GARVALOV observed, in the absence of Mr. Aboul-Nasr, who would certainly have made a remark on the subject, that in paragraph 1 of its report Luxembourg gave the impression that it had acceded to the Convention as a gesture of international solidarity, which was perhaps not an entirely legitimate motive.

23. Paragraph 21, which indicated the largest groups of foreigners, mentioned a group of "Germans". Did that include Germans both from the Federal Republic of Germany and from the German Democratic Republic?

24. The CHAIRMAN, speaking in his personal capacity, noted that in paragraph 1 of the report Luxembourg's "gesture of international solidarity" was mentioned in due connection with its objective: "promoting and furthering respect for human rights and the fundamental freedoms of the human person". Thus, the reference to solidarity fell within a different context from the one that existed in the case, for example, of Venezuela.

25. Mr. DUHR (Luxembourg) said that the Germans mentioned in paragraph 21 were undoubtedly citizens of the Federal Republic of Germany since, though some Luxembourg nationals had relatives who were nationals of the German Democratic Republic, the number of permits to leave the German Democratic Republic for Luxembourg was extremely small.

26. The CHAIRMAN, after thanking the representative of Luxembourg for taking part in the work of the Committee, said that the Committee had thus completed its consideration of the fifth periodic report of Luxembourg (CERD/C/155/Add.2).

Mr. Duhr (Luxembourg) withdrew.

Eighth periodic report of Chile (CERD/C/148/Add.4)

At the invitation of the Chairman, Mr. Cruz (Chile) took a place at the Committee table.

27. Mr. CRUZ (Chile), presenting the eighth periodic report of Chile (CERD/C/148/Add.4), reaffirmed the attachment of the Government of Chile to the values enshrined in the Convention and its confidence in the dialogue entered into with the Committee.

28. Racial discrimination had always been unknown in Chile, where all the fundamental human rights of the human individual were recognized for all inhabitants without exception. As the equality of all in dignity and rights was proclaimed in article 1 of the Constitution, which was the supreme law, there could be no law or regulation entailing any form of discrimination. Bills were examined for Constitutionality by the Constitutional Court and an appeal could be lodged before the Supreme Court against any law on the grounds

of unconstitutionality. The legality of regulations and of all other administrative acts was verified by the Office of the Controller General of the Republic.

29. Foreign policy was also guided by principles of equality and Chile was a party to a large number of instruments designed to prevent racial discrimination and condemning all forms of racism. Chile had always condemned racism, apartheid, the bantustan policy and discrimination in general. It was actively involved in the work of all the United Nations bodies on behalf of the independence of Namibia and the independence of all colonial peoples.

30. The principles of equality which had characterized Chilean society throughout history had been given concrete expression from the very first days of Chile's independence in the abolition of titles, of slavery and of all forms of discrimination among citizens of Spanish, Creole or indigenous stock. There had thus emerged a homogeneous nation, in which racial distinctions were unknown and the cultural development of the various ethnic groups - Mapuches, Huilliches or Aymaras - was given full respect. Chile had no social categories based on ethnic, cultural or religious criteria.

31. The descendants of the indigenous peoples nowadays enjoyed the same rights as all citizens of the Republic, but in addition received special assistance from the State. Government policy towards indigenous groups, particularly in the Ninth region (Araucanía) aimed in general at ensuring full participation by those citizens in the national life while safeguarding their cultural values. To that end, the Government had promulgated various legal enactments, in particular Decree-Law No. 1939 of 1977 concerning the acquisition, administration and disposal of State property whereby the Ministry of State Property transferred, free of charge, land occupied by members of the indigenous population to the Farming Development Institute, responsible for implementing assistance programmes in the real estate sphere. Furthermore, the Ministry of State Property issued directly to members of the indigenous population or their descendants title deeds to the land occupied by them. The conditions to be met for obtaining such titles to real estate had been amended in 1987 for the region of Tarapacá and the Second region of Antofagasta. The property concerned comprised the agricultural land in those regions, where descendants of the indigenous population were numerous. Finally, the Chilean authorities had drawn up simplified administrative procedures for regularizing the situation of small real estate owners who either possessed no title deeds or whose title deeds were inadequate, thus enabling a large number of small agricultural and urban land-owners to have their property entered in the land register. The land rights of the indigenous population were, moreover, guaranteed by an act promulgated in 1972 and amended in 1979 by a decree-law whose implementation had allowed 53,000 title deeds to be issued (as of September 1986).

32. The Farming Development Institute gave the indigenous communities free legal assistance and conducted important inquiries on their behalf at the request of the courts. It also appointed defence counsels for the indigenous population, responsible for their defence and free legal representation in all matters relating to the division of the reserves, the liquidation of the indigenous communities, and the indigenous lands, in which indigenous persons were involved either as plaintiffs or as defendants.

33. In Chile there were many institutions and corporations whose purpose was to develop national culture and traditions by promoting understanding and appreciation of Chilean values. They were concerned in particular with imparting instruction and providing social services to the indigenous population and with promoting knowledge, protection and dissemination of the Mapuche culture in general and, Mapuche history, traditions, language, sports and folklore in particular. Mention should also be made of the major role played in that regard by the Pre-Colombian Museum of Chile.

34. Since the submission of the eighth periodic report, in 1987, a bill had been introduced to amend the Civil Code and the Code of Commerce and prepare the definitive text of the law on minors. By abrogating article 132 of the Civil Code, which gave husbands a variety of rights over the persons and goods of their wives, the new Act put an end to the legal incapacity of married women, thereby also benefiting the indigenous married woman. Recognition of the legal capacity of women modified the status of the individual within marriage, with repercussions on a large number of articles of the Civil Code which had previously required the husband's, or failing that, the courts' consent to any act performed by the wife, but without thereby undermining the cohesiveness of the marital partnership.

35. During the transitional period established by the 1980 Constitution, the Government had set about forging the institutions necessary for the full restoration of a democratic, pluralist régime, in preparation for the presidential and general legislative elections due to be held on 11 March 1990. It had thus promulgated all the fundamental laws of a constitutional nature which would govern the country from that date onwards. Chile considered the right to self-determination to be a prerequisite for guaranteeing and furthering human rights, and had accordingly organized, in October 1988, a plebiscite by which the population had been invited to approve the 1980 Constitution. The purpose had been to determine whether or not the person proposed by the commanders-in-chief of the armed forces for the office of President of the Republic until 1997 was approved by the population. In other words, the people had been able to decide, through the plebiscite, whether or not it accepted the candidate put forward; if it did so, the candidate was to hold the office of President of the Republic until the stated date, and one year after the plebiscite general elections were to be held, with several parties and candidates, to constitute a national congress comprising two chambers. If the candidate was rejected, the President then in office was to remain for a further year and on 14 December 1989 elections, contested by various political parties and candidates, were to be held to choose the new President of the Republic.

36. The plebiscite had taken place in optimum conditions of transparency. The majority of voters - 53 per cent - had opted for the second solution, i.e. elections involving several candidates on 14 December 1989, and 43 per cent had opted for the first solution. That a régime taxed with authoritarianism and violation of public freedoms should have obtained such a percentage of the vote in free elections, after being in power for 15 years, was a fact worth stressing.

37. The Government of Chile had published the results of the plebiscite the very night after it had taken place, and within 24 hours the President of the Republic had publicly recognized the result, and had added that sovereignty resided with the nation, that the nation had made its will known and that its

wishes should be respected as provided for under the Constitution. The Special Rapporteur of the Commission on Human Rights, Mr. Volio Jiménez, had recognized in the report he submitted to the Commission at its forty-fifth session, 20/ that the conduct of the plebiscite had been impeccable.

38. It should also be mentioned that the visits of the Special Rapporteur to Chile, which had begun in 1985, had marked the renewal of co-operation between the Government of Chile and the United Nations. In all his reports Mr. Volio Jiménez had described the Government's co-operation as exemplary and productive, and had observed that if all Governments could follow its example the human rights situation in the world would be greatly improved. The seven reports by Mr. Volio Jiménez clearly demonstrated that genuine progress had been made and that the situation had considerably improved, even though both the Government and the opposition still had much to do.

39. It was also important to note that the state of emergency and the state of alert had been lifted throughout the country by supreme decrees of the Ministry of the Interior dated 27 August 1988. That had had direct repercussions on the exercise of civil and political rights: with the lifting of the emergency measures, the country had entered upon a phase of legal normalization in which all the provisions of the Constitution in respect of human rights and fundamental freedoms were implemented in full.

40. Furthermore, by a supreme decree dated 1 September 1988, all restrictions on entry into the country had been lifted. A plebiscite held on 30 July 1989, had approved 54 constitutional reforms amending, inter alia, article 41 of the Constitution relating to states of emergency. The powers vested in the President of the Republic under the state of siege and the state of emergency had been considerably curtailed and, in addition, the possibility of initiating an action for amparo (enforcement of constitutional rights) and protection was henceforth maintained even under a state of emergency. As well as abolishing some of the powers of the President of the Republic, the reforms provided that measures adopted under a state of emergency could not remain in force once it had been lifted.

41. It could thus be stated that all those new developments had created a climate of total freedom in Chile and facilitated the establishment of a political process based on universal suffrage, in which all political parties would participate without restriction and would possess a wide variety of means of expression.

42. Mr. FERRERO COSTA, speaking as rapporteur entrusted with the preliminary examination of the eighth report of Chile (CERD/C/148/Add.4), observed that the report related to the year 1986 and had just been supplemented orally by the representative of Chile. The concern aroused during the past decade in a number of United Nations bodies, the Committee on the Elimination of Racial Discrimination in particular, by human rights violations under the Chilean military government was well known. He referred to the summary records of the meetings of the Committee devoted to the previous reports of Chile, between 1975 and 1985. Regarding the eighth report, he cited resolution 1989/62, dated 8 March 1989, of the Commission on Human Rights expressing "its concern at the persistence of serious violations of human rights" (para. 6) and urging the Government of Chile "to continue adopting measures to permit ... the full enjoyment of human rights and fundamental freedoms" in Chile (para. 7).

43. Note must, however, be taken of an improvement in recent months. The representative of Chile had just described the measures adopted during the past two years by his Government to ensure a rapid return to democracy. In the resolution previously cited the Commission had already "taken note with satisfaction of the decision of the Government of Chile to respect the result of the referendum of 5 October 1988" (para. 3). It had "urged the Chilean Government to work for the re-establishment of a representative and pluralistic democracy ... through free elections and in an electoral process open to all citizens on an equal footing" (para. 4). In that connection, it should be noted that the representative of Chile had just announced free general elections to choose the President of the Republic and the Congress, through which a new Government would take office. The eighth report of Chile must therefore be viewed within the context of a transition towards democracy in the country. He hoped that the new Government would bear in mind the observations and questions of the members of the Committee when it came to draw up the ninth periodic report.

44. As far as the form of the report was concerned, he felt that the Committee's general guidelines (CERD/C/70/Rev.1) had been followed; however, he saw little change from the policy described in the previous reports regarding the implementation of the Convention. A number of questions raised in the past by the members of the Committee had still not been clarified in the eighth report. The Government continued to assert that there was no racial discrimination in Chile (paras. 2, 4 and 8 of the report). Such assertions were known to be unacceptable to the Committee; pursuant to article 9 of the Convention, Governments should rather inform the Committee of the legislative, judicial, administrative or other measures they had taken to give effect to the provisions of the Convention.

45. As to the demographic composition of the population, the eighth report indicated that it was difficult to obtain precise data, but nevertheless stated that according to the most recent census there were 150,178 indigenous persons in the reserves in southern Chile. However, the sixth report (CERD/C/90/Add.4 and Corr.1) had mentioned 20,000 Aymaras and 250,000 Mapuches or Araucanos (1977 figures). It had also referred to two small groups, the Alacalufes (45 persons) and the Yamanas (40 persons), who were described as living in poor conditions. In view of the discrepancies between the figures provided in the two reports the Government of Chile should, in its next report, provide complete and up-to-date information on the demographic composition of the population of Chile in general, and on the indigenous populations in particular.

46. With regard to article 2 of the Convention, the report mentioned measures adopted by the Government of Chile on behalf of the Mapuches or Araucanos, in regard to environmental health, strengthening of land ownership, legal assistance, education, loans, etc. It should be borne in mind that the issue of ownership of Mapuche lands had already been dealt with in the sixth and seventh reports and that the Committee had expressed some concern on the subject. He referred in that connection, to the Committee's reports on its twenty-third and twenty-fourth sessions 21/ and on its twenty-seventh and twenty-eighth sessions. 22/ Subsequently, the Special Rapporteur appointed by the Commission on Human Rights to study the human rights situation in Chile had indicated, in its report 23/ to the General Assembly at its forty-third session that the situation of the Mapuche population was very different from the favourable picture given by the Government of Chile. In his report to the

Commission on Human Rights, at its forty-fifth session, the Special Rapporteur had recommended to the Government of Chile that it should review its legislation concerning the indigenous population, especially with regard to the division of land. 24/ The conclusions of the Special Rapporteur were thus in contradiction with what was said in paragraphs 16 and 18 of the eighth report and with what had been said in the two previous reports concerning the indigenous population. Could the representative of Chile therefore provide more detailed information on the actual situation of the Mapuche population regarding land, in view of the reports of the Special Rapporteur of the Commission on Human Rights?

47. On the subject of free legal assistance to the indigenous communities (paras. 19 to 22 of the eighth report), he asked for particulars concerning the nature and number of cases dealt with by the defending counsels of the indigenous communities. In particular, he would like to know whether such counsels defended members of the indigenous population free of charge in cases other than those relating to land mentioned in paragraph 20. He would also like to have information on the participation of Mapuches, Aymaras and other indigenous minorities in the two plebiscites held in the last 12 months.

48. In connection with article 3 of the Convention, it should be noted that in its eighth report Chile did not mention its relations with South Africa. However, during the consideration of the third report (CERD/C/117/Add.3) the Committee had requested information about the precise extent of diplomatic and trade relations between the two countries, whether the Government had taken any steps to counter South Africa's diplomatic approaches to Latin American countries, and what contribution it had made to international efforts aimed at dismantling South Africa's illegal rule in Namibia. 25/ The Committee must therefore reiterate the questions already put and request recent information on diplomatic, consular, economic and trade relations between Chile and the racist South African régime.

49. In relation to article 4 of the Convention, he noted that the position adopted in the eighth report regarding punishable acts of racial discrimination and the penalties laid down by law was similar to that taken in the previous reports. There again, the questions asked previously, particularly in the Committee's report on its twenty-third and twenty-fourth sessions, 26/ must be repeated. Specifically, the Government must again be asked for information on the legislative, judicial, administrative and other measures taken to implement the provisions of article 4, in particular for the purpose of punishing all incitement to racial discrimination and dissemination of ideas based on racial superiority or hatred. The intention expressed in that connection in paragraph 39 of the eighth report should be taken into account, but did not suffice.

50. Turning to article 5 of the Convention, he expressed the hope that the new Government of Chile, which was to be appointed in December 1989 would make known in its ninth report the measures taken to ensure the enjoyment without discrimination of the civil and political rights mentioned in that article, in particular in paragraphs (c) and (d). Enjoyment of human rights was not fully guaranteed by legislation which recognized them in theory: they must be exercised in practice by all citizens without any distinction whatsoever, particularly on ethnic or cultural grounds. In that connection, he mentioned the recommendation made by the Special Rapporteur on Chile of the Commission on Human Rights that "the economic improvements in Chile should redound to the

benefit of those disadvantaged citizens living in the shanty towns and, in general, be used to improve the living conditions of the working classes". 27/

51. Concerning article 6, it would be remembered that, in the field of protection of human rights and remedies before the courts, one of the most disputed features in Chile had been the behaviour of the ordinary and military courts in a number of cases. The next report should therefore provide information on new measures adopted to improve the implementation of the provisions of article 6.

52. He requested too that the new Government of Chile soon to be appointed should clarify, pursuant to article 14 of the Convention, whether it recognized the competence of the Committee to consider communications from individuals or groups of individuals claiming to be victims of acts of racial discrimination.

53. To conclude, he thanked the Government and its representative for the eighth periodic report of Chile and the supplementary information it had provided, and expressed the hope that Chile would continue its progress towards democracy and that the dialogue entered into with the Committee would be further developed in the ninth periodic report.

54. Mr. PARTSCH felt that the way in which the eighth periodic report (CERD/C/148/Add.4) of Chile was presented was not very practical as it comprised two parts, one general and one containing information relating to the articles, which it should be possible to consult at the same time.

55. He shared Mr. Ferrero Costa's view that the human rights situation in Chile was rather precarious and that there were grounds for doubting the veracity of the information provided by the Government of Chile concerning the protection of those rights. The Committee was aware that sequelae of the situation that had prevailed several years previously in Chile still existed. Paragraph 7 of article 19 of the Constitution, dealing with the right to personal liberty and security of person, did not identify the authority empowered to issue an arrest warrant. The Committee was aware that during the critical period such warrants had been issued not by the courts but by the police or some other dubious body, and that still appeared to be the case. The wording of the second part of paragraph 7 (d) suggested that it was considered normal for a person to be held incommunicado. Such treatment, even if not directly relevant to the Convention, was inhuman and contrary to the provisions of the International Covenant on Civil and Political Rights.

56. With regard to section B of the first part of the report of Chile, which dealt with the incorporation of the Convention in internal law, it was not stated there that the Convention applied directly only in so far as it was automatically applicable. However, in some cases it was necessary, in order to implement the Convention, for the State party to adopt legislative measures. In order to implement article 4, for example, it must declare the acts specified in that article to be offences punishable by law. A bill designed to implement article 4 had been under consideration for 16 years, and yet the Government of Chile claimed that it had fulfilled all the obligations it had entered into under the Convention.

57. He was somewhat surprised at the information contained in the report in relation to article 6, for he knew that the procedure of amparo took so many years that the Government had itself felt the need to adopt a new administrative procedure to review the restriction that prevented many Chilean exiles from returning to their country. It was regrettable that that positive measure was not mentioned in the eighth report.

58. Mr. AHMADU observed that paragraphs 34 and 37 of the eighth report of Chile (CERD/C/148/Add.4) were somewhat vague and did not take into account the questions previously raised by the Committee.

59. Paragraph 36 merely stated that Chile condemned apartheid and that it had participated in the activities of bodies whose aim was to combat apartheid. He inquired whether, since its last report, the Government of Chile had made any efforts to prevent and eliminate apartheid in South Africa. Chile was the South American country that had the closest links with South Africa: it maintained diplomatic, commercial and even military relations with that country. It was even rumoured to have taken part in joint military exercises with South Africa. In spite of protests by several anti-apartheid organizations, it seemed to have had no hesitation in strengthening its diplomatic representation in Pretoria. He would therefore like to know whether the Government of Chile intended to limit or even put an end to its relations with South Africa. He also inquired whether, notwithstanding the apparent homogeneity of the population of Chile, Mr. Cruz had any data on ethnic minorities, in particular of African origin, and whether there were measures to allow members of those minorities to take part in elections on an equal footing with other citizens.

60. Mr. CRUZ (Chile) thanked Mr. Ferrero Costa for his observations on the eighth periodic report of Chile (CERD/C/148/Add.4). He recognized that it was preferable to avoid asserting that there was no racial discrimination in Chile and acknowledged that his Government should progressively take measures to combat such discrimination.

61. In reply to the remark made by Mr. Partsch on the presentation of the report, he undertook to ensure that its presentation was improved in the future to facilitate the work of the Committee.

62. In reply to Mr. Ferrero Costa's question about land ownership and the indigenous populations, he said that if he had not provided fuller particulars on that subject it was because he considered that the report was sufficiently explicit. As regards land ownership, he explained that there was a communal title deed to the whole of the reserve, but that each Mapuche family within the reserve worked a plot of land which it regarded as its private property and which was recognized as such by the other members of the Mapuche community. That form of land ownership had been adopted in the 1880s and remained in effect until 1925. Reforms had subsequently been introduced, and the protection of the indigenous population in respect of land ownership was at present governed by the Act of 26 September 1972. The decree-law of 1979 had brought about other major reforms pertaining to the legalization of individual ownership of land. Action was currently being taken to measure the area of each plot occupied by the Mapuche families and of all the land making up the reserve. One hundred thousand hectares of land had thus been surveyed and then shared out among the Mapuche families. Environmental health measures, approved by all members of the reserve, had been taken.

Those various measures had entailed no change in the system of exploitation but had made it possible to assign to the Mapuches in 1988 71,000 individual title deeds on the strength of which they could now obtain various forms of assistance. Between 1983 and 1989 the value of that assistance had totalled 270 million Chilean pesos.

63. He reassured Mr. Ferrero Costa, who had expressed concern as to whether there was any hope of the electoral situation in Chile improving. The situation was currently being consolidated. The candidates who would stand in the elections in December 1989 had already been designated. In particular, four Chilean citizens would stand for the office of President, and parliamentary elections would also be held. Between now and December the electoral process announced by the Government would be progressively set in motion.

64. In reply to Mr. Partsch, who had observed that it was abnormal and inhuman to maintain a person incommunicado, he said that the absence of legislation in that respect was indeed regrettable. When the International Red Cross had visited Chile, it had drawn the Government's attention to that shortcoming. It would indeed be desirable for the Government to look into the matter with a view to taking measures to remedy the situation.

65. In reply to Mr. Ahmadu's question concerning the attitude of the Government of Chile towards apartheid, he stated that the diplomatic relations between Chile and South Africa were perfectly normal relations. As for the joint military exercises allegedly carried out by the two countries, he had never heard of them. There were certainly exchanges in the fields of culture and tourism, arranged by private bodies, but the Government was in no way involved in their activities.

66. As regards the participation of the indigenous populations in the elections, he said that they were entitled to vote under the same conditions as the other members of the population. In the most recent elections, abstentionism had been extremely low, showing that the majority of the population took an interest in the elections and was prepared to participate in them.

67. To conclude, he said he would inform his Government of all the questions raised by the members of the Committee so that it could reply to them in its next periodic report. The members of the Committee were distinguished and highly qualified figures and he fully realized that they had displayed impartiality in framing their comments.

68. The CHAIRMAN thanked the representative of Chile for having willingly replied to the questions raised by the members of the Committee. Everyone knew that Chile was currently passing through a trying period. He hoped that the Government of Chile would pursue the task of reform it had undertaken and that its progress would be apparent in the next periodic report. He said that the Committee had concluded its consideration of the eighth periodic report of Chile (CERD/C/148/Add.4).

Mr. Cruz (Chile) withdrew.

The meeting rose at 5.55 p.m.

847th meeting

Friday, 18 August 1989
at 10.25 a.m.

Chairman: Mr. YUTZIS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (*continued*)

Ninth and tenth periodic reports of Cyprus (CERD/C/149/Add.24 and CERD/C/172/Add.3)

At the invitation of the Chairman, Mr. Yiangou (Cyprus) took a place at the Committee table.

1. Mr. YIANGOU (Cyprus), introducing the ninth (CERD/C/149/Add.24) and tenth (CERD/C/172/Add.3) periodic reports of Cyprus, said that his Government warmly appreciated the Committee's efforts to eliminate racial discrimination throughout the world and to nurture understanding of and respect for the dignity of the human person and the equality of all human beings. Since its independence, Cyprus had sought to protect and promote human rights and fundamental freedoms and had pursued a consistent national and international policy of combating racial, ethnic, religious, linguistic and all other forms of discrimination. That policy was reflected in its ratification of a number of international human rights instruments, including the 1950 European Convention on Human Rights and its 1952 Protocol.

2. His country's ninth periodic report was analytical and comprehensive and it contained responses to questions and comments arising out of the Committee's consideration of previous reports. With respect to article 3 of the Convention, Cyprus had always condemned racial segregation and abhorred the system of *apartheid*. The *apartheid* régime was an affront to human civilization and Cyprus had repeatedly called for its abolition within various international bodies, notably the Commission on Human Rights. Cyprus had never maintained diplomatic, economic, commercial or cultural relations with South Africa. It had been an active member of the United Nations Council for Namibia for several years and hoped for a successful conclusion to the process under way in that country.

3. With regard to article 4, the Government of Cyprus had taken into account the comments made by Committee members during the discussion on the eighth periodic report (CERD/C/118/Add.4) concerning the preventive role of legislation. While no offences under that article had been committed in Cyprus, measures to fill the gaps in the country's legislation were currently being prepared and the legislation of other States parties to the Convention was being studied for purposes of comparison.

4. The Government was doing everything within its power to guarantee to its citizens all the rights listed under article 5 of the Convention. However, the military occupation of 37 per cent of the national territory of Cyprus, an unacceptable situation about which the Committee had expressed grave concern in the past, gave rise to serious problems, particularly concerning the rights referred to in article 5 (d) (i) and (v). Two hundred thousand Cypriots, including a member of the Committee, Mr. Sherifis, had been deprived of those rights for 15 years.

5. He hoped that the tables on school enrolments by ethnic groups included in annex 6 to the report provided the Committee with sufficient information on the education of children in minority groups, although the figures were a little out of date.

6. The Government made every effort to implement article 7 of the Convention and used the mass media to publicize the principles of the Convention and the work of the Committee.

7. The Committee had been given extensive information on developments in Cyprus in the field of human rights, but he reminded members that the hope expressed in its decision 1 (XXVII) of 1983 that the Government of Cyprus would "be enabled to exercise its full responsibility for the implementation of all its obligations under the Convention on its whole national territory, and that the unacceptable state of affairs in Cyprus, due to the foreign occupation of part of its territory, will finally be brought to an end", had not yet been fulfilled. Regrettably, despite recent improvements in the international situation, the settlement of several regional conflicts and the withdrawal of occupying forces from a number of areas, 37 per cent of the territory of Cyprus remained under occupation. The approximately 200,000 Greek Cypriots who had been uprooted by the 1974 invasion and had become refugees in their own country were still unable to return home and were thus deprived of their legitimate rights. The high level of foreign settlement in the area was a source of grave concern. Flagrant violations of human rights and fundamental freedoms were being committed in the occupied territory, the cultural and religious heritage of the area was being plundered and 1,619 missing persons remained unaccounted for. However, talks aimed at finding a just, viable and lasting solution to the problems in Cyprus were currently being held under the auspices of the Secretary-General of the United Nations and he hoped that it would prove possible to secure the human rights and fundamental freedoms of all Cypriots.

8. Mrs. SADIQ ALI drew attention to an interview with the President of Cyprus published in the International Herald Tribune on 10 April 1989, in which he had expressed his hope that the two parties to the negotiations might be able to draft an outline agreement by the end of May 1989. She would like to know what the present state of the negotiations was and whether such an agreement was imminent.

9. Mr. PARTSCH, referring to Mr. Yiangou's statement that the existing gaps in Cypriot legislation were soon to be filled, said that most of those gaps related to article 4 of the Convention. In particular, there was some doubt as to whether section 47 of the Penal Code, which referred to "seditious intention", complied with the requirements of that article. Sedition was defined by The Concise Oxford Dictionary as "agitation against the authority of a State; conduct or speech tending to rebellion or breach of public order". In a country with the demographic composition of Cyprus such behaviour would never be in the interests of the majority, although it might be the recourse of political opposition groups or ethnic minorities. Consequently, section 47 did not facilitate implementation of article 4. He also noted that section 51 (a) had recently been added to the Penal Code. While that section did not mention sedition, neither did it cover all the provisions of article 4. He asked whether the Cypriot authorities had studied those matters when considering the proposed special legislative measures and hoped that details would be provided in the following report.

10. Mr. GARVALOV drew attention to the fact that the International Convention on the Elimination of All Forms of Racial Discrimination and other international instruments were directly applicable and legally enforceable in Cyprus. He praised the Government of Cyprus for its policy of direct application, which compared favourably with the situation in many other States parties.

11. He believed that the ninth report (CERD/C/149/Add.24) gave a very clear picture of the implementation of the Convention by Cyprus and deeply regretted that its Government was unable to meet all its obligations as a result of the unlawful military occupation of part of its territory. There were frequent reports of racial discrimination in the occupied part of the country and the situation appeared to be deteriorating. In his opinion, it was high time for the Committee to reiterate its decision 1 (XXVII) of 21 March 1983 adopted at its twenty-eighth session, in order to help and encourage the Government of Cyprus and enable it to implement the Convention in full.

12. Mr. YIANGOU (Cyprus) said that Mrs. Sadiq Ali's question on the negotiations to find a just, viable and lasting solution to the problems in Cyprus was a very pertinent one. Talks had begun a year ago in Geneva under the auspices of the Secretary-General of the United Nations and had continued in Nicosia. The President of Cyprus and the leader of the Turkish Cypriot community had met the Secretary-General in New York on two occasions and a third such meeting was scheduled for September. It was hoped to arrange subsequent meetings in order to continue the dialogue and reach a draft outline agreement. Some ideas had been put forward by the Office of the Secretary-General. The Government of Cyprus was prepared to negotiate on the basis of those ideas and was anxious to reach an agreement at the forthcoming meeting in New York. He hoped that Mrs. Sadiq Ali was satisfied with that information but he was ready to answer any further questions she might have.

13. With regard to the comments by Mr. Partsch on the country's implementation of article 4, he did not regard the Committee as the appropriate forum for a legal discussion on the phrase "seditious intention" in section 47 of the Penal Code. The Government of Cyprus, however, took a serious view of the Committee's comments and Mr. Partsch's remarks would be taken into account in drafting the new items of legislation. Appropriate measures would be drawn up and enacted as soon as possible, upon completion of a study of legislation in other States parties.

14. He confirmed Mr. Garvalov's statement that, under article 169 of the Constitution, duly ratified self-executing international instruments were directly applicable in Cyprus and were enforced by the courts and administrative authorities. However, if an instrument required the adoption of domestic legislation, such legislation was enacted. Regrettably, he was also obliged to confirm the assertion that the tragic situation brought about by military occupation of part of the country was deteriorating.

15. Mr. RESHETOV congratulated Cyprus on its comprehensive ninth report (CERD/C/149/Add.24), which answered many questions relating to implementation of the Convention. Like Mr. Garvalov, he was happy to note that the Convention was directly applicable in Cyprus. He regretted that international instruments were not directly applicable in his country, the Soviet Union, but, as the Soviet Government was currently considering the introduction of direct application, the experience of countries which operated

such a system was of considerable interest. Paragraph 45 of the report stated that members of religious groups were required "to opt to belong to one of the two constitutionally recognized communities of the Republic" and paragraph 46 gave details of the choices made. Such a requirement would create many practical problems in his own country and he asked whether it had led to difficulties in Cyprus.

16. The report's description of educational measures to combat racial discrimination was extremely interesting and, in his view, the approach to history described in paragraph 67 was correct. Sadly, such an approach was very rare and most countries, to their shame, gave children a one-sided version of past events which reflected current prejudices in their societies.

17. He fully endorsed the Committee's decision 1 (XXVII) and said that if he had been a member at that time, he would have given it his unreserved support. As was reflected in paragraph 88 of the report, flagrant violations of human rights were being committed in the territory under occupation and he extended his sympathy to his colleague, Mr. Sherifis, who was among the victims of that situation.

18. Mrs. SADIQ ALI requested confirmation of her understanding that the talks between the President of Cyprus and the leader of the Turkish Cypriot community had so far yielded no results. She joined Mr. Garvalov and Mr. Reshetov in supporting the adoption of a decision in the same terms as decision 1 (XXVII). She also expressed concern that one member of the Committee, like many other Cypriots, was unable to visit his home because of the situation prevailing in that part of the territory.

19. The CHAIRMAN, speaking in his personal capacity, recalled the position taken by the Committee over the years on what, to use the official United Nations vocabulary, should be termed the "question of Cyprus", from the setting up of a working group in 1978 to prepare a draft declaration on Cyprus and the adoption of that declaration to the Committee's decision 1 (XXVII) of 1983. Meanwhile, the continuing situation of conflict, as well as the particular circumstances of one member of the Committee as a result of that situation, remained a real problem which could not be ignored. In the light of the proposal made by Mr. Garvalov and supported by other members of the Committee and the historical events that had taken place in Cyprus, he thought the Committee should give its views and suggestions with regard to the position it wished to adopt on the ninth report of Cyprus.

20. Mr. PARTSCH said he was under the impression that Mr. Garvalov, supported by Mrs. Sadiq Ali, wished to renew the Committee's decision 1 (XXVII). At the time that decision had been taken, he himself had had doubts as to whether it was appropriate for the Committee to concern itself with a purely political matter, and he recalled that two prominent members of the Committee had abstained from the consensus on the decision, namely Mr. Lamptey and Mr. Shahi. The Committee had been informed that negotiations were proceeding and, unlike Mrs. Sadiq Ali, he considered that that very fact was a result in itself. He would consider it inappropriate for the Committee to reconfirm its previous decision or take any new decision, as that might have a disturbing influence on the current negotiations. The Secretary-General of the United Nations had exerted considerable efforts to bring the two parties to the conflict to the negotiating table, and the Committee should be very careful to remain strictly within its field of competence, which precluded such political proclamations.

21. Mr. ABOUL-NASR said it was highly gratifying that Cyprus was complying with its reporting obligations under article 9 of the Convention and continuing its dialogue with the Committee, especially in view of the problems faced by that country.

22. Despite the continuing foreign occupation of the northern part of Cyprus, which he condemned, the Committee was not the proper forum for entering into such political matters. The wording of decision 1 (XXVII) was no longer appropriate, since the General Assembly had since called for negotiations, which had commenced, and the parties to the negotiations were the President of Cyprus and the leader of the Turkish Cypriot community. Those were not to be described as negative developments, to be dramatized as though the negotiations had failed. Moreover, the representative of Cyprus had informed the Committee that further contacts were to be held in September, which was far from the apparently hopeless situation at the time of the Committee's earlier decision. However sympathetic he felt towards the Government of Cyprus about the division of the island, the most that the Committee could do at the present stage was to include references in its report to the expressions of concern by Committee members about the continuing occupation of part of the State concerned and the failure as yet to resolve the situation.

23. Mr. GARVALOV said he believed he had been misunderstood in saying that he thought the Committee should perhaps reiterate its decision 1 (XXVII). He had in no way meant that a new decision or formal text reiterating the Committee's 1983 decision was required. As he knew that his own position would be reflected in the report, the suggestion made by Mr. Aboul-Nasr could be followed and the report could simply state that the Committee reconfirmed its earlier decision.

24. Mr. RESHETOV specified, in order to dispel any misunderstanding, that had he been a member of the Committee at the time the decision was taken, he would have associated himself with its wording; he now gladly accepted Mr. Aboul-Nasr's suggestion.

25. Mrs. SADIQ ALI agreed with Mr. Aboul-Nasr's comments, which met the Committee's concerns.

26. Mr. SONG Shuhua said it was a matter for concern that the Convention could not be fully implemented in part of the territory of Cyprus and that one member of the Committee was prevented from returning home. The Committee's discussion should focus on the question of racial discrimination, and he agreed with Mr. Aboul-Nasr's views. Both sides were now parties to talks on the situation, under the auspices of the Secretary-General. As the two sides had a long history of living on the island, he hoped that the issue could be resolved through peaceful means. The Committee's work should be conducive to peaceful negotiations.

27. Mr. FERRERO COSTA and Mr. PARTSCH expressed agreement with Mr. Aboul-Nasr's proposal.

28. Mr. SHAHI welcomed the constructive suggestions by Mr. Aboul-Nasr, but said that his own support would depend on the precise formulation to be included in the Committee's report. He would wish to see the text of any statement purporting to represent the views of the entire Committee.

29. The CHAIRMAN said it was his understanding that Mr. Aboul-Nasr had made no specific proposal of that nature but had merely given his own point of view, which could be reflected in the summary records. He asked Mr. Aboul-Nasr to confirm that interpretation.

30. Mr. ABOUL-NASR said his suggestion had been that the part of the Committee's report dealing with the report of Cyprus should include the various points of view expressed in the Committee; he had suggested neither a formal text nor a general statement.

31. Mr. RESHETOV expressed support for Mr. Aboul-Nasr's suggestion.

32. Mr. YIANGOU (Cyprus) thanked the members of the Committee for their comments. Replying to Mr. Reshetov's question about any difficulties encountered in enabling members of the three religious groups to opt to belong to the Greek or the Turkish community, referred to in paragraphs 45 and 46 of the ninth report, he explained that those groups, the Maronites, Armenians and Latins, had fully exercised their constitutional rights under article 2 of the 1960 Constitution and had opted freely to belong to the Greek community. To his knowledge, no problems had arisen out of the exercise of that option.

33. He thanked Mr. Reshetov for his comments concerning the objective representation of historical events in history curricula, and confirmed that that was indeed the case, although, as was true in all countries in the world, different authors might give their own views and interpretations of certain historical events.

34. In response to Mrs. Sadiq Ali's question about the results of the current negotiations and Mr. Partsch's comment that the very holding of such negotiations could be considered a result in itself, he said that although he agreed with Mr. Partsch in a sense, it must be clear that there were no substantive results to report to date. Whereas the Government of Cyprus was willing to continue the negotiations, certain negative attitudes and renewed intransigence were emerging on the other side, preventing the continuation of negotiations. His Government fervently hoped that the negotiations would soon be resumed and would yield results in the form of an outline draft agreement which, it was hoped, would be worked out and agreed to at the forthcoming meeting between Mr. Vasiliou and Mr. Denktash in New York.

35. He welcomed the sympathy Mr. Aboul-Nasr had expressed with the difficulties the Government of Cyprus still faced in implementing its full responsibility to apply the Convention in the whole territory of Cyprus. He also welcomed his suggestion that the Committee should express its concern at the continuing occupation of part of Cyprus and at the failure of negotiations, so far, to resolve the problem.

36. He thanked the Committee for the sympathy and concern it had expressed at the continuing situation in Cyprus. All comments by members of the Committee on the ninth report would be taken into account by the Government of Cyprus in preparing its next report. He hoped he could then report that a Government of a new Republic of Cyprus was in a position to implement the Convention throughout the whole territory of Cyprus without any impediment.

37. The CHAIRMAN said that the Committee had concluded its consideration of the ninth (CERD/C/149/Add.24) and tenth (CERD/C/172/Add.3) periodic reports of Cyprus.

Mr. Yiangou (Cyprus) withdrew.

Third, fourth and fifth periodic reports of Burundi (CERD/C/145/Add.1)

At the invitation of the Chairman, Mr. Muyovu (Burundi), took a place at the Committee table.

38. Mr. MUYOVU (Burundi), introducing his country's third, fourth and fifth periodic reports, presented in a single document (CERD/C/145/Add.1), said that Burundi had always shown unfailing attachment to the ideals and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights, and in the Convention, which Burundi had ratified on 1 November 1976. Burundi had also just ratified the African Charter on Human and Peoples' Rights. The Constitution of the Republic of Burundi, adopted on 20 November 1981, confirmed its determination to ensure protection of the dignity of the human being and the recognition and protection of human and peoples' rights.

39. Burundi fully subscribed to the provisions of the International Convention on the Suppression and Punishment of the Crime of *Apartheid*, to which it had been a party since 1978. It remained convinced that *apartheid* was a negation of the universal principle of equality of all human beings and therefore a negation of the aims and principles of the Charter of the United Nations. *Apartheid* constituted a threat to international peace and security and should purely and simply disappear. His Government did not maintain diplomatic, military, economic or other relations with South Africa and firmly condemned any form of collaboration with the South African régime. The Burundi Movement for support to southern Africa, set up in 1984, contributed to the international campaign against *apartheid* and to informing public opinion about the crimes of *apartheid* and the misdeeds of racial discrimination; it aided as far as it could the southern African peoples who were struggling for liberation.

40. Through its regulatory and legislative system as well as in its administration and legal practice, Burundi showed its attachment to the universally recognized values of equality of all rights and obligations without distinction as to sex, origin, colour, race or opinion. The Penal Code of Burundi prescribed penalties against racial or ethnic aversion.

41. Since 3 September 1987 Burundi had been living in an era of change, for on that date the Second Republic had been overthrown and the Third Republic had been born, with Major Pierre Buyoya as its President. Among the many reasons for the change was the concern to ensure better respect and protection for the physical and moral integrity of the human being and for his property and to establish social justice for all, as well as genuine democracy for the economic development of Burundi. President Buyoya had resolutely taken respect for human rights as his watchword, and dialogue and concerted action were the key elements in the policy of the new régime. Within a few hours of the proclamation of the Third Republic, all arbitrarily detained prisoners, including prisoners detained for their opinions, had been liberated, and other prisoners under the ordinary law had been amnestied. The people of Burundi

had gradually recovered their rights and fundamental liberties, in particular freedom of expression and of worship. The dialogue between the State and the different religious confessions in Burundi had been reopened, and the bitter conflict opposing Church and State under the Second Republic had been resolved. Social justice had been the Government's constant preoccupation for almost two years in all sectors of national life, especially those of education and health. The improvement of living conditions of the population, particularly in rural areas, was among the present Government's priority concerns.

42. Some people still strove to make the world believe that ethnic segregation existed in Burundi in education, the army, and health, employment and economic activities. Any objective observer could, however, see that the Burundis shared the same conditions of life; lands, livestock and occupations were shared out equally; rural development projects (irrigation, electrification, roads, co-operatives, regional development societies) benefited the entire population.

43. The Government had committed itself to a programme of universal schooling for all children and to the development of secondary and higher education for the benefit of all. The same was true of health, employment and all sectors of the national life.

44. Since there was no discrimination in Burundi, the bloodshed which had occurred repeatedly, and especially during August 1988, had to be explained by reference to national unity, which the Third Republic had made considerable efforts to consolidate since it had come to power.

45. Contrary to the leaders of the Second Republic, who had made the subject taboo, President Buyoya had ceaselessly declared that the ethnic problem required a just and lasting solution. He had taken a series of political and administrative initiatives showing his determination to open the dialogue which had been lacking on the subject. That unblocking of the ethnic question was in itself a revolution: for the first time a Burundi régime had decided to confront the problem head-on. For the Third Republic, in which dialogue and concerted action constituted the mode of government, the ethnic problem had to be solved by a peaceful and democratic discussion. Nothing in the internal political situation of Burundi therefore could have led anyone to foresee the bloody events with an ethnic tinge that had occurred in August 1988 in two communes in the north of the country, Ntega and Marangara. In reality, the population of those two stricken communes had been purely and simply the victim of an external aggression. Investigations had revealed that methods of deception had been used against part of that population, inciting it to kill, sack and pillage. The peasants who had revolted were but the executors of a plan conceived elsewhere and aimed at sapping the foundations of national unity. The motive of those behind the massacres was now certain. They wished to draw the attention of the world to their claims since the policy of the Third Republic had cut the ground from under their feet and robbed them of any international audience. Without their spokesmen in Europe and elsewhere, they risked lapsing into oblivion.

46. The events in the north of Burundi in 1988 sprang from external aggression and were in no way a problem of the domination of one ethnic group over another. The ideas of peace and unity were profoundly rooted in the soul of the Burundi people, whether they were Hutu or Tutsi. Inter-ethnic

massacres were unknown in the centuries-old history and culture of Burundi. Before colonization, the consciousness of belonging to an ethnic group had not formed a subject of conflict in Burundi oral tradition. The seed of the crises that Burundi had experienced since independence had to be sought in colonial history and in poor administration during the post-colonial period. Conscious of that state of affairs, the Third Republic had placed national unity among its priorities. Some had asked whether it would pursue that policy after the events of Ntega and Marangara. The President of the Republic had replied that it would.

47. Indeed, shortly after the return to peace in the two stricken communities, the Government of the Republic of Burundi had launched an appeal to all refugees who had left the country to come back to it voluntarily. The appeal had been successful, for fewer than 1,000 of the 48,000 original refugees now remained in Rwanda, the border country with Burundi. That was evidence that the refugees had accepted the guarantees given them by the Government of Burundi under the agreements concluded under the auspices of a quadripartite commission composed of the Governments of Burundi, Rwanda and Zaire as well as the Office of the United Nations High Commissioner for Refugees (UNHCR); in fact all the refugees who had voluntarily accepted repatriation had been able to reclaim their properties, goods, jobs or school places without any problem. No criminal or other proceedings had been brought against them.

48. There had been two other important events at the end of 1988: the nomination of a Government of National Unity with a Prime Minister at its head, and the establishment of a Commission to study the question of national unity. Those two developments clearly expressed the will of the new régime to bring to an end the divisions which had long undermined the country. The most important recent development was the submission of that Commission's report. It proposed, among other things, a Charter of Unity, which would shortly be the subject of a popular referendum. It had also taken a stand on other kinds of divisions, from regionalism to clan allegiance, and had made constructive recommendations for safeguarding and consolidating the unity of the Burundi people. The report of the Commission, as well as the relevant speeches by the President of the Republic, had been submitted to the Committee. The Government of Burundi would return to the subject in its sixth report, which was in preparation. However, the very fact that free Burundis of all ethnic, regional, professional and religious origins had sat around the same table to discuss the question of national unity was evidence of the maturity of the Burundi people, and of its ability to achieve its aim of building a new society based on social justice. That aim deserved the support of the international community, and therefore of the Committee.

49. In that connection the most recent round table of development partners of Burundi, held at Bujumbura from 25 to 28 April 1989, in its final statement, had expressed its support for the objectives of openness and reconciliation assumed by the Third Republic and its satisfaction with the measures taken by the Government of the Third Republic to consolidate national unity.

50. Still more recently, on 10 August 1989, the 12 member States of the European Economic Community had made public a statement concerning Burundi handed to the Prime Minister of Burundi by the representatives of Belgium, the Federal Republic of Germany and France, noting the measures taken by the Burundi authorities since the events of Ntenga and Marangana in August 1988,

commending the broadening of the Government and the establishment of a Commission to study the question of national unity, and welcoming the recommendations made public on 13 May 1989 by the Commission, advocating, in particular, the adoption of a new Constitution and a new Charter of National Unity, as well as more open access to public employment. The statement had concluded by encouraging the Burundi authorities to pursue the process they had initiated so as to reinforce pacification and promote internal balances in Burundi society.

51. A fuller explanation of the positive developments in Burundi would be presented in his Government's sixth periodic report.

52. Mr. BANTON speaking as rapporteur entrusted with the preliminary examination of the third, fourth and fifth periodic reports of Burundi, said that ethnic relations in contemporary Burundi could not be understood without a knowledge of its history. An agricultural people called Hutu had been established in the territory before the fifteenth century, when the immigration began of several pastoralist ethnic groups collectively known as Tutsi. By the end of the eighteenth century a sacred monarchy with a Tutsi King had been established. The king was at the top of a social pyramid formed of a web of interdependent relationships involving both Hutu and Tutsi, but giving precedence to the latter. That structure had been maintained during the colonial period from 1899, when the territory had become part of German East Africa, falling into Belgian hands during the First World War and being administered first under a mandate and then as a Trust Territory until 1962, the year of independence. At that time it had a population of about three-and-a-half million, 83 per cent Hutu and 16 per cent Tutsi.

53. Voting by individuals changed the highly complex traditional structure. Those who enjoyed privilege within that structure had sought to retain it. There had been a sequence of assassinations, mutinies and massacres which had led to the abolition of the monarchy in 1966 and the establishment of the first republic under President Michel Micombero. His Government had introduced a measure of power-sharing between Tutsi and Hutu, but had not succeeded in preventing ethnic conflict, leading in 1972 to the slaughter of some 100,000 persons, possibly 4 per cent of the total population. It had perhaps begun with Hutu attacks upon Tutsi that had led to massive counter-attacks: soldiers and bands of Tutsi youths, supplied with lists of Hutu names, appeared in class-rooms of the university and at secondary schools. Young people were loaded into trucks and taken away; few returned. Hutu priests had been taken from the churches and Hutu doctors and nurses from the hospitals. The Tutsi had taken those who were or might become Hutu leaders, so that the events had been called a selective genocide. Power-sharing had ceased and Tutsi domination had been reinforced, with many Hutu fleeing to Rwanda.

54. As a result of a military coup in 1976, Jean-Baptiste Bagaza had become President. The Second Republic had attempted a policy of reconciliation: it had ratified the International Convention on the Elimination of Racial Discrimination. The Hutu, however, had remained very much disadvantaged. For example, many Hutu parents were reluctant for their children to continue their education beyond primary school. They remembered what had happened in 1972. Recently it had been reported that the 7 regional and 15 cantonal inspectors who took decisions on applications for secondary education were all Tutsi. Rights guaranteed under the Constitution had been withheld by over-zealous

municipal police. The right to freedom of association had not been respected. For example, a group of about 10 university students from Rujaga had formed the *Cercle culturel de Buhonga*, staging plays to raise funds for their parish after obtaining the necessary permits. In January 1985 they had been detained for two months without explanation. Since four persons in five were Hutu, and since the Hutu were discontented over their exclusion from power and privilege, any group representing the common people, such as a *sahwanya* or local community council, or a parish within the Catholic Church, could be a vehicle for political sentiment and attract the suspicion of the Government. President Bagaza had said in 1983 that "we have reduced the influence of the Catholic Church and we shall reduce it further".

55. When Burundi had submitted its initial report (CERD/C/15/Add.3) in 1980, its representative had referred to the more detailed report which his Government intended to submit as soon as possible. Members of the Committee had asked for additional information and repeated those requests the following year when considering the second report (CERD/C/62/Add.1). They had been told eight years before that the next report would contain fuller replies, but it had not done so. The Committee's questions had been mostly about constitutional provisions but the most important problems in Burundi's case seemed to be not legislative but to relate to the non-discriminatory enforcement of the laws and regulations.

56. With regard to the request for information on the distribution of Hutus and Tutsis, the Government stated in paragraph 4 that they could not be distinguished. The Government of Rwanda, however, had a policy of balance, consisting in the equitable allocation of jobs in the public and private sectors to see that the allocation was proportionate to the representation of each ethnic group in the population as a whole. They could not have introduced that policy had they not thought it possible to identify Hutu and Tutsi. In his opinion, it would be possible to conduct in Burundi a census in which people were asked whether they identified themselves as a member of an ethnic group, but it might be politically counter-productive to do so unless the purpose of the classification was understood and was one in which people had confidence.

57. The Hutu-Tutsi division was reflected within the Roman Catholic Church. Until recently, none of the seven Bishops were Hutu. Nevertheless, the Church was at times a vehicle for Hutu sentiment and the previous régime's policy of reducing Catholic influence might have contributed to the events of 1988. In 1982, there had been 500 Belgian priests in Burundi and it was expected that by the end of 1987 they would have all been forced out, leaving 107 Burundi-born priests and 60 nuns for the country's 1,200 churches. In 1987, 3,000 Catholic lay catechists had been ordered to stop preaching and giving communion in churches. The reason why he welcomed the assurance by the Burundi delegation that problems in relations between the State and the Church had eased was that wherever there was no channel for political expression, the people would use other channels and it then became appropriate for the Committee to inquire into them.

58. It would be useful to hear if there had been any prosecutions in connection with the prohibition of incitement to racial hatred. With regard to paragraph 14 of the report, subsequent events showed that the right of all citizens to expression within the framework of the party had not been respected.

59. The report under consideration represented the position of the Bagaza Government a few weeks before its overthrow in the military _coup_ which had led to the installation of President Pierre Buyoya, who showed more sympathy for the Hutu. That seemed to have encouraged Hutu aspirations that, as in Rwanda from 1962, they might achieve more equitable representation in government; at the same time, it had added to the apprehensions of Tutsi who suspected Hutu of being in alliance with exile groups.

60. It was impossible to determine exactly what had led to the next disorders. It seemed that several Burundi officials had made incautious statements warning Hutu malcontents, and that those had led Hutu to fear that they were about to be attacked. As a result, on 14 August 1988 Hutu mobs had killed several hundred Tutsi. The army had intervened to put an end to ethnic strife but had employed measures disproportionate to the threat. In that connection, there were eyewitness accounts of small children and their mothers being shot or bayoneted in the back after being forced to lie down. Several thousand unarmed civilians had been killed and about 35,000 refugees had fled to Rwanda. Subsequently, the Government had appointed a Commission composed of 12 Hutu and 12 Tutsi to study the question of unity. It had appointed a Hutu as Prime Minister. The former Director of Immigration and Security, accused of inciting trouble, had been arrested. Tutsi squatters on Hutu-owned land had been evicted. Most of the 1988 refugees had returned.

61. The Commission's report, which had been published on 13 May 1989, was an excellent document and laid foundations for a more hopeful future. It declared that the 1988 massacres were the outcome of a campaign by extremist Hutu splinter groups based abroad, an analysis which was too simple. More attention should be paid to the Commission's statement that Burundi was to the extent of more than 90 per cent a nation of country people whose only desire was to live in peace. The Commission stated that the true problem lay in the élite, which had created within itself a series of rifts for the purpose of defending and protecting its own selfish interests and recommended a variety of institutional changes, mentioning the party, the Head of State, the army, education, land tenure and employment. He hoped that the sixth report of Burundi would contain a detailed account of actions taken as a result of the Commission's recommendations.

62. He also hoped that the sixth report would include a section on higher education, because university students and graduates should be among the first to rise above sectional divisions. The enforced retirement of Mr. Barnabé Karolero, the Rector of Bujumbura University, at the end of April 1988 seemed to have been an instance of political interference which had contributed to the disorders three and a half months later.

63. He had two main impressions of the current situation. Firstly, in Burundi there was currently a greater appreciation of the need to improve ethnic relations than at any time since the assassination of Prince Rwagasore in 1961. He commended the willingness of the Government to meet with representatives of non-governmental human rights organizations; it had, for instance, received a delegation from Amnesty International two months previously. But, secondly, from his knowledge about ethnic conflicts in other regions, he concluded that a solution to Burundi's problems would require more radical measures than those so far contemplated.

64. The biggest problem concerned the army, which had been recruiting overwhelmingly from the Hima, a section of the Tutsi who inhabited the locality in which the army's training school was to be found. Hutu were unwilling to join, and their fears would not be allayed so long as that situation continued. If Hutu confidence was to be cultivated, the Government would need to publish for the army and for other State institutions specific goals and monitoring procedures. They would need to adopt a target of, say, 10 per cent Hutu representation in the army by 1995 and 20 per cent by the year 2000. They would also need to explain how the figures were collected and to publish them.

65. The problem of the army was interwoven with that of the political psychology of reconciliation. In Burundi at the present time, there were many people, both Hutu and Tutsi, who remembered the slaughter of their kinsfolk. Their memories would not die. In that connection, he said that people in his country, the United Kingdom, were repeatedly reminded of the grievances of both Catholics and Protestants in Ireland. Events that had occurred 300 years ago were important in the lives of Irish people at the present time. The United Kingdom Government was currently considering a proposal to change the law in order to permit the trial of persons for war crimes committed between 1939 and 1945 for which evidence had only recently become available. Other European countries had been going through the same travail in the hope of purging their history of evil-doing. On the fortieth anniversary of the ending of the Second World War, the President of the Federal Republic of Germany had reminded his Parliament of the need to understand that there could be no reconciliation without remembrance. There was a duty to future generations to investigate, to publish the facts and to bring suspects before public courts; otherwise memories festered. Similar examples could be quoted for other regions. For instance, the belief that in 1916 a Middle Eastern ethnic group was massacred was still the cause of bombings, assassination and bitter controversy. If Burundi was to achieve reconciliation, it must at the very least ascertain whether in 1988 any soldiers were given unlawful orders and which soldiers were responsible for atrocities. Those apparently responsible must be brought before appropriate tribunals.

66. Another major problem was that of relations with the Hutu groups in exile, particularly the Palipehetu, who, though not the only voice for Hutu interests, appeared to represent something of a consensus within the Hutu community in exile. There was a genuine desire among the exiles for dialogue and he hoped that when the sixth report was submitted, Burundi would be able to state that the process of reconciliation had extended to the exiles.

67. Turning to domestic questions, he noted that the previous Government had failed to pay the annual assessments due under the International Convention on the Elimination of All Forms of Racial Discrimination. The new Government could demonstrate its good intentions by rectifying that situation and by making the declaration under article 14.

68. In conclusion, he observed that the Government of Burundi could have withdrawn the report to the Committee submitted by its predecessor. Instead it had chosen to press ahead and to inform members candidly and honourably about developments since 1987, for which it was to be commended. The new Government had inherited frightful problems. If it continued on the paths of reform and reconciliation, members of the Committee would follow its actions with sympathy.

69. Mr. ABOUL-NASR said that there was no need for the Committee to dig into the past and to evoke historic events, except with a view to preventing their recurrence. That was applicable to every major event, including the French Revolution of 1789. The casualties of that Revolution were a thing of the past and, in that connection, he noted that France had recently celebrated its bicentenary. Every revolution produced strife, a statement which was also true of the Great October Revolution in Russia. Currently, the people in that country were in a much better position than they had been under the tsarist régime.

70. In conclusion, he wished the people of Burundi well and hoped they would find a solution to their problems.

71. Mr. BESHIR thanked the delegation of Burundi for its honest and straightforward description of the current situation in that country. He noted that the representative of Burundi had not concealed the ills of the past and the fact that massacres had occurred. It was to be hoped that that situation would not be repeated and that the new Government would respect and implement its regional, national and international obligations.

72. He thought that the next report of Burundi should indicate how many lives had been lost and contain detailed information on the nature of the dialogue to be conducted.

73. With regard to the question of repression, he noted that in many African countries the desire by a particular group not to share power or wealth constituted the real reason behind some massacres that had taken place.

74. The next report should also provide information on such questions as how many refugees had returned, how many people had left Burundi, the composition of the armed forces, the demographic composition of the country, and whether military or non-military groups had committed atrocities.

75. Mr. AHMADU associated himself with the congratulations extended to the representative of Burundi on having presented a frank and candid report to the Committee and bringing members up to date on the situation in that country. He also associated himself with the words of encouragement expressed by members concerning the Government's efforts to resolve the various problems it faced.

76. The cause of trouble in many African countries was the fact that the colonial Powers had applied a policy of "divide and rule" and had simply handed over power without seeing to it that the population was prepared to participate in the electoral process. As a result, in many African countries, the minority group constituted the rulers and the majority constituted the subjects. He was not sure that the Committee should suggest constitutional or electoral structures for some of those countries.

77. Burundi was doing its utmost to resolve its problems. It was a country that had allowed its internal affairs to be discussed in the OAU and in many other forums. It had submitted one of the most candid reports he had ever

seen. It needed encouragement and the new Government was genuinely interested in reconciliation. It should also be noted that both the report and the information given during the current meeting had answered many of the questions raised by the Committee.

78. He endorsed Mr. Banton's remarks concerning the payment of arrears and the need for the Government to consider making the declaration referred to in article 14.

The meeting rose at 1 p.m.

848th meeting

Friday 18 August 1989
at 3.35 p.m.

Chairman: Mr. LAMPTEY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Third, fourth and fifth periodic reports of Burundi (CERD/C/145/Add.1) (concluded)

At the invitation of the Chairman, Mr. Muyovu and Mr. Nzosaba (Burund took places at the Committee table.

1. Mrs. SADIQ ALI associated herself with the other speakers who had congratulated the representative of Burundi on his presentation of his country's report (CERD/C/145/Add.1) and on the frankness with which he had expressed himself. The efforts being made to promote national reconciliation should be specifically aimed at restoring the confidence of the Hutus, since that was an essential factor in any reconciliation. The most serious problem would be to combat discrimination, particularly in the army, the administration and education. Only 20 per cent of university students were Hutus, and the number of Hutus attending secondary school was also small. Furthermore, it was essential that Hutus should be able to have access to various kinds of job. Until those problems were solved, there would be no real national reconciliation.

2. She would like to know what the reconciliation efforts currently being made consisted of and what role was being played by the Patriotic Front, since it was not mentioned in the report.

3. Several signatories of an open letter of protest sent to the President of the Republic by Hutu intellectuals were reported to have disappeared. According to Amnesty International, at least seven of them had been arrested and were imprisoned at Entebba. Had they been released in the national reconciliation process?

4. The Constitution of Burundi had been suspended in September 1988. She therefore asked whether Burundi currently had a Constitution or whether the Government was planning to amend the Constitution which had previously been in force.

5. Mr. MUYOVU (Burundi) conveyed his sincere thanks to members of the Committee for the kindness and understanding they had shown with regard to the current situation in his country.

6. The report under consideration (CERD/C/145/Add.1) reflected the new spirit of transparency and openness characterizing the Government of the Third Republic. In particular, he wished to thank Mr. Banton, the rapporteur entrusted with the preliminary examination of Burundi's report, for his excellent work, which reflected his sincere desire to obtain information and to arrive at a correct understanding of Burundi's problems. He also thanked Mr. Aboul-Nasr, Mr. Beshir and Mr. Ahmadu, who had stressed that ethnic problems were not, unfortunately, peculiar to Burundi and that there was no point in repeatedly digging up the tragic situations of the past.

7. The fundamental objective of the Third Republic was the internal reconciliation of the Burundi people. That did not mean that the past would be completely swept away. In Burundi the ethnic problem had been the subject of an extensive democratic debate at all levels and in all sectors of national life. It was no longer a taboo problem. In that connection, the dialogue mentioned by Mr. Beshir, on which the policy of the new régime was based, concerned all the important questions in national life, including national unity, which were being debated by all political organizations, by associations, and even by religious denominations. From top to bottom, dialogue was the key word of the new régime. Thus the question of national unity could be dealt with in depth, since the Burundi people was able to discuss all problems affecting it and the leadership provided it with the means to do so.

8. He would try to reply as well as he could to the various questions asked by members of the Committee, which would be taken up again in Burundi's next periodic report.

9. With regard to Mr. Banton's questions, he explained that his country had a very ancient history, even much more ancient than the rapporteur for Burundi's report could imagine. In fact, the unity of Burundi went back several centuries. History provided no information on what had happened before colonization, and it was not possible to know whether or not there had been ethnic conflicts. The settlement theories mentioned by Mr. Banton were not in accordance with the facts, and to date no adequate theory to explain the settlement of Burundi had been found. All that was known had been transmitted orally, since the Burundis had learned to write only in colonial times. It was, however, known that Burundi had always been a structured State, organized around a supreme authority, the King, who represented no particular ethnic group. All the inhabitants, both Hutus and Tutsis, had identified with him. There had, of course, been a few cases of exploitation, but such exploitation had not reflected the domination of one ethnic group by another, since both the Hutus and the Tutsis had been able to engage in agriculture or animal husbandry. It had been wrongly claimed that the Hutus had always been agriculturalists and the Tutsis pastoralists. In fact they had both engaged in both occupations, and at the time there had been rich Hutus and poor Tutsis, as well as poor Hutus and rich Tutsis. Although relationships involving domination had sometimes existed, they had only been relationships between different social classes.

10. When the colonizers had arrived, Burundi had been a united country but, in order to establish its domination more effectively, the colonial power had tried to promote the idea, then in fashion, of the superiority of some races over others. The administrative system established at the time had destroyed the traditional foundations of the unity of Burundi society. The colonial administration had replaced Hutu chiefs by Tutsi chiefs and Tutsi children had been allowed to go to school whereas Hutu children had not been entitled to education. All that explained the explosive situation at the time of independence. The murder, in 1961, of Prince Louis Rwagasore, who had galvanized the Burundi people around the ideals of unity, had settled nothing. On the contrary, after his murder the situation had worsened, since a problem of leadership had then arisen. There had been many conflicts between members of the Burundi élite. Meanwhile, the First Republic had replaced the Monarchy. Initially it had brought hope, but it had not been able to offer a valid project of society. The Second Republic, in which

Burundis had placed all their hopes, had been a dismal failure. Now it was possible to speak of - the word was not too strong - a miracle. For the first time the leaders agreed to discuss problems. The fact that they recognized the existence of problems and the agreed that they should be debated openly was already a revolution in itself. They were not content with speeches; they had taken specific measures to create a government of unity, as well as a national commission.

11. The crisis in August 1988, instead of dragging Burundi into a spiral of violence, had been managed lucidly and responsibly. Some people had wrongly accused the army of committing massacres. In fact, the massacres had been the work of extremist elements who, armed with clubs and machetes, had incited people to kill one another. The army, whose role was to maintain order and security, had therefore had no alternative but to re-establish order, which had been disturbed by incendiary hordes killing everything in their path, particularly all those who did not belong to their own ethnic group. Without the intervention of the army, which had made it possible to stop the massacre, the whole country would probably have been annihilated. There had, of course, been deaths on both sides, but at such a moment a Government could not be expected to keep a precise record of the number of disappearances or to draw up statistics to ascertain how many Hutus and how many Tutsis had died. For the moment, the population was mourning its dead, whether they were Hutus or Tutsis, and it did not want any repetition of such a massacre. In response to the Government's appeal, most of those who had fled from Burundi had voluntarily returned to the country. By May 1989 only about 956 out of 48,000 refugees had not yet returned to Burundi. Everything had happened peacefully, there had been no inquiry to seek out those responsible for the massacres, and those who had returned had not been prosecuted. They had been reinstated in their jobs and their dwellings had been rebuilt.

12. The signatories of the open letter to the President of the Republic had displayed irresponsibility and been guilty of subversion, but the President, in the interests of reconciliation, had seen fit to release all those who had been imprisoned and to allow them to return to their work.

13. The Government had therefore decided to let bygones be bygones and to take measures to prevent massacres from recurring in the future. Problems had in fact arisen with regard to the army, education and security, but they were only fleeting. The population had not yet forgotten what had happened. If a Hutu was asked to enlist in the army, there was no certainty that he would accept immediately. Time must be left to do its work. Nevertheless, the army was open to all those who wanted to join it, depending on their aptitudes and regardless of their ethnic origin.

14. As for Mr. Banton's question concerning quotas, he explained that in Burundi quotas were considered to have harmful effects which could lead to reverse discrimination. The Committee had stated that it wanted ethnic equality to be respected in enrolments in the army, but such a procedure would make the ethnic problem even more acute. That was why he considered that quotas were to be mistrusted. It seemed difficult to enrol exactly the same number of Hutus and Tutsis in the army. If the army had a majority of Tutsis, that was because people had defected, died or fled. A certain amount of time would be needed to solve the problem. It was true that the Military Committee mentioned by Mr. Banton was composed exclusively of Tutsis, but that was due

to the fact that there had been no Hutu senior officer since the events of 1972 and Hutus were afraid to join the army. The first need was therefore to overcome that fear.

15. Furthermore, the Government of Burundi was fighting on several fronts, against regionalism, tribalism and the problems arising from the country's land-locked position, and until those issues were settled and the effects of the past had disappeared, it would be difficult to bring about national unity. Nevertheless, the Committee should place its confidence in the Government, which had undertaken to turn the page and to achieve national reconciliation. Burundi's lateness in paying its contributions was not due to any unwillingness on the part of the Government. Burundi was a poor country, but the Government would do everything it possibly could to pay its dues.

16. Mr. NZOSABA (Burundi) said that he very much hoped that members of the Committee had taken note of the Government's willingness to state the problems clearly and to discuss them freely with all those who could in any way help in solving them. Whether they were ethnic problems or problems connected with the country's land-locked position, which hampered its economic development, Burundi relied on the international community. However, it was clear that ethnic problems, the most pernicious, could be really solved only by the Burundis themselves, once they had overcome their differences.

17. Mr. Banton considered that Burundi's problems were not legislative but were due to a discriminatory application of the texts. Mr. Ahmadu considered that the problems were institutional and that a supervisory procedure needed to be set up. The Burundi leaders themselves considered that hasty action should be avoided: there was no point in drawing up a new Constitution as long as the Burundi people had not recovered confidence in itself. The Government of Burundi therefore wished to work in depth, at the educational level, in order to forge a new collective consciousness. It wanted to create a framework of transparency everywhere, as was evidenced by the supervisory procedures already existing, such as the procedure that had been followed for the entrance examination for secondary education in May 1989. An international symposium on "human rights for a peace drive in Burundi" would soon be organized in his country, since there could obviously be no development where human rights were flouted.

18. Mr. BANTON thanked the Burundi delegation for the further information it had given. He pointed out to Mr. Muyovu that he had not mentioned quotas, but indicative percentages, which were more flexible. Despite the disadvantages mentioned by Mr. Muyovu, the establishment of such percentages was essential if a recurrence of serious conflicts was to be prevented.

18. The CHAIRMAN thanked the delegation of Burundi for having participated in the Committee's work. He announced that the Committee had concluded its consideration of the third, fourth and fifth periodic reports of Burundi.

Mr. Muyovu and Mr. Nzosaba (Burundi) withdrew.

The meeting rose at 4.15 p.m.

849th meeting

Monday, 21 August 1989
at 10.35 a.m.

Chairman: Mr. LAMPTEY

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-THIRD SESSION

(a) ANNUAL REPORT SUBMITTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION

(b) REPORTING OBLIGATIONS OF STATES PARTIES TO UNITED NATIONS CONVENTIONS ON HUMAN RIGHTS (General Assembly resolution 42/105) (agenda item 2) (*continued*) [*/]

1. The CHAIRMAN recalled that the Secretary-General had convened a meeting of Chairpersons of human rights treaty bodies at Geneva from 10 to 14 October 1988 to discuss various aspects of problems confronting the Committee and of the reporting system. He had represented the Committee at the meeting. The conclusions and recommendations of the meeting were contained in its report (HRI/MC/1988/1). On the basis of those recommendations, the General Assembly had adopted resolution 43/115 of 8 December 1988 and the Commission on Human Rights had adopted resolutions 1989/46 and 1989/47 of 6 March 1989.

2. The Committee would have to consider the recommendations in question and express its views. One of the most important recommendations concerned the question of consolidating the guidelines of supervisory bodies entrusted with consideration of the reports of States parties on the implementation of United Nations conventions on human rights (A/40/600, sect. III).

3. He drew attention to a letter addressed to him from the Chairman of the Committee on the Elimination of Discrimination against Women, informing him that, at its eighth session, that Committee had considered the report of the meeting of Chairpersons and decided to transmit its own conclusions to other Chairpersons. In view of the fact that one of the recommendations of the meeting of Chairpersons was that there should be communication among Chairpersons, he thought that it might be appropriate if the Committee authorized him to transmit its conclusions to other Chairpersons.

4. Mr. SHERIFIS, drawing attention to the operative paragraph of the draft resolution contained in Committee decision 1 (XXXVI) of 9 August 1988 on the financial situation of the Committee on the Elimination of Racial Discrimination, said that a study of the question seemed to indicate that the situation had not improved despite appeals by the Committee, its Chairman and other members of the Committee. He therefore thought that the Committee's recommendation to the General Assembly was still valid. He would like to know whether the General Assembly had taken any action on the Committee's draft resolution. If not, the Committee should resubmit its recommendation to the Assembly.

[*/] Resumed from the 840th meeting.

5. The CHAIRMAN drew attention to the recommendation of the meeting of Chairpersons that the General Assembly should ensure the financing of the Committees from the regular budget of the United Nations (HRI/MC/1988/1, para. 70) and added that the recommendation was based on the fact that not only the Committee on the Elimination of Racial Discrimination but other committees as well were experiencing financial difficulties. The Commission on Human Rights had also discussed the problem.

6. After an exhaustive consideration of the question, the General Assembly had not followed the recommendation of the Committee or that of the meeting of Chairpersons. Instead, it had called upon all States parties to fulfil without delay and in full their financial obligations under the relevant instruments on human rights, and had requested the Secretary-General to consider ways and means of strengthening collection procedures and making them more effective.

7. The Commission on Human Rights in its resolution 1989/47 had acknowledged the recommendations of the meeting of Chairpersons and had noted that the General Assembly could consider the temporary allocation of necessary funds to treaty bodies experiencing financial difficulties by way of advances out of the regular budget, to be reimbursed when the outstanding contributions were received. The Commission had then called upon States parties to meet all their financial obligations pursuant to human rights instruments.

8. The question would undoubtedly be referred to the General Assembly again and he thought therefore that the Committee would have to reiterate its decision 1 (XXXVI).

9. Mr. ABOUL-NASR endorsed the Chairman's suggestion that the Committee should reiterate its decision.

10. Mr. BANTON said that he supported the suggestion made by the Chairman. The Committee had done all that it could with regard to the question of financial obligations and had reached a consensus in that regard.

11. Referring to the recommendation (HRI/MC/1988/1, para. 92) of the meeting of Chairpersons that each treaty body should consider imposing some general timelimits on speakers, he said that he had checked on the use of the Committee's time in considering the 14 most recent periodic reports. He had found that the relative distribution of time between Committee members and reporting States militated against the idea of imposing time-limits on speakers. What determined the length of a discussion was not the time taken by individual States but the number of Committee members requesting the floor. He had noticed that, as a result of the rapporteur system, fewer members were asking to speak. The second factor was the amount of time taken by members. He thought that it would be excessive for the Committee to try to consider four reports every day. It could take four reports on one day and three reports on the next. If it adopted that procedure, it would have to make small but acceptable alterations in its working practices. First of all, it would have to begin its meetings punctually and make full use of the allotted time. Secondly, with the Committee's authority, the Secretary might suggest to representatives of reporting States that they should aim at an introduction of not more than 10 minutes and a reply of not more than 45 minutes, on the understanding that in many cases they might need less time and that, in some cases, because of particular circumstances, they might need

more. However, members must then regard the reply of the representative of a reporting State as something that he could prepare in advance; following his reply, they should not ask him the kind of questions they could have put after his introductory statement. If the Committee agreed to adopt that procedure, it could perform its task satisfactorily within its existing resources.

12. The CHAIRMAN, speaking in his personal capacity, said that he had never been in favour of imposing time limits on speakers. He had always thought that when a State party accepted an invitation from the Committee and sent a representative, the expense alone should give it the privilege of speaking for as long as it wished.

13. As a result of the rapporteur system, members were not given the necessary time to study a particular report. Therefore, it happened quite frequently that it was only after the discussion had been in progress for some time and the representative of the State party had given his reply that members thought of questions to put.

14. He failed to see the need for the Committee to impose time-limits on speakers. It had never had any problems in connection with the consideration of the reports of States parties and should not be involved in problems affecting other committees. Moreover, it had always considered the reports before it.

15. Two points should be borne in mind with respect to the question of four-week sessions, namely, the length of time members had to absent themselves from other duties and the tiring nature of the Committee's work.

16. Personally, he believed that the Committee's financial problems were not related to its working methods but resulted solely from the failure of certain States parties to meet their obligations. That failure was not due to budgetary constraints, as the amounts involved were minimal, but reflected a lack of political will on the part of a few States. The Committee's work was being frustrated and, in his view, it was the responsibility of the United Nations as a whole to resolve the crisis and to make provision for the necessary funding within its budget.

17. In his view, the current climate was conducive to settlement of the problem and the situation appeared to be improving. However he reminded members that even countries which strongly supported the Committee, such as the Netherlands and the Scandinavian countries, had taken a negative position at the forty-third session of the General Assembly for reasons of solidarity. He therefore urged members to exert whatever influence they possessed on their countries' delegations to the Assembly as the Committee's next session was in jeopardy if outstanding contributions, which amounted to $172,000, were not paid. He believed the United Nations Secretariat was making a serious mistake in refusing to advance money for the Committee's expenses merely because a very small number of countries had never paid their contributions, although it was quite clear that most countries would pay their 1989 contribution by the end of the year. The only course of action open to the Committee was to reiterate the appeal it had made the previous year and to look for support from the Commission on Human Rights. He stressed that change could not be brought about through the efforts of the United Nations Secretariat, but only through a General Assembly resolution adopted by a majority of Member States.

18. Mr. YUTZIS said that he had described three possible options available to the Committee during earlier discussions and he was glad that the topic had arisen again. He remained unconvinced that the Committee had in fact done everything in its power to improve the situation and he regretted the resigned attitude which it seemed to be adopting. He agreed with Mr. Lamptey that the problems stemmed from a lack of political will in certain circles and the Committee's failure to respond represented a serious political misjudgement. Its discussion, in particular, Mr. Banton's comments, had centred on the symptoms rather than the cause of the difficulties and it was well known that such an approach was never successful. Political problems had to be solved by political means and, with that in mind, he wished to put forward a few suggestions, some of which had been included in his previous statement.

19. Like Mr. Lamptey he believed that the Committee should maintain contact with the Commission on Human Rights and other human rights bodies and should avail itself of every opportunity to make those bodies aware of its problems. The Sub-Commission on Prevention of Discrimination and Protection of Minorities was currently holding its forty-first session and he suggested that the Chairman should attend one of its meetings and make an appeal on behalf of the Committee. That would be a political move, which would indicate the Committee's refusal to resign itself to the circumstances. The Committee should also adopt a strategy aimed at disseminating information on its work and increasing public awareness of its problems. He had distributed to members the report of a recent international meeting on racism containing a statement on the Committee's problems which he had made at that meeting and which had been circulated to 7,500 people. Lastly, he considered that the Committee should take some collective action to illustrate its condemnation of the current situation. A problem of ethics was admittedly involved but there was a price to be paid for all political decisions. In response to a similar suggestion made at the thirty-sixth session, Mr. Foighel had expressed his reluctance to strike. Members of the Committee should, however, bear in mind that they might have to abandon their duties permanently if no action was taken. That would be an extremely serious development at a time when problems of racial discrimination were once again in the forefront of the international scene. A policy of resignation should be categorically rejected and measures should be adopted indicating the Committee's utter dissatisfaction with the current situation.

20. Mr. PARTSCH disagreed with Mr. Lamptey's statement that only a very small number of States parties had not paid their assessed contributions. As of 1988, 42 States were in arrears; 23 African States, 9 Asian States, 9 Latin American States and 1 State from the Eastern Group. The unpaid contributions currently totalled $172,000, of which the sum of $121,000 was outstanding from years prior to 1989. He therefore supported the Secretariat's policy of separating the 1989 arrears from those of previous years. In repeating its appeal to the General Assembly, it was important for the Committee to explain the need for repetition and to state unequivocally that the previous appeal had not produced the desired effect.

21. The CHAIRMAN agreed that the previous appeal's failure to produce any results had to be made clear.

22. Mr. SONG Shuhua said that the problem of outstanding contributions was not merely financial in nature but reflected the attitude of certain States towards implementation of international obligations. An improvement in the

Committee's procedures might lead States parties to take a more positive view of its work. He considered that the appointment of rapporteurs had improved the reporting procedures and said that the Committee should continue to seek ways of saving time and increasing efficiency. He was sure that it could find a solution to its problems and emphasized that a positive attitude on the part of States parties would make it much easier to resolve the financial difficulties. The key issue was one of attitude not money and that fact should be reflected in the Committee's appeal to the General Assembly. It was also necessary to make a further improvement in working methods, so as not to jeopardize the implementation of the Convention.

23. Mr. RESHETOV endorsed Mr. Partsch's statement and said that reporting and financial obligations were equally important in implementation of the Convention. Failure to satisfy either requirement was a serious matter and represented a refusal to accept international commitments. His own country, the Soviet Union, found it difficult to fulfil all its international financial obligations but it recognized the importance of respecting those commitments and other countries must be encouraged to do the same.

24. Mr. ABOUL-NASR said that the Committee was not facing a crisis, but rather a difficult situation which would be with it for many years. It was unrealistic to expect payment from States parties which had never paid their assessed contributions and last year's appeal to the General Assembly had been totally ineffective. The Committee should therefore concentrate on urging the Secretary-General to advance funds from the regular budget to cover the Committee's expenses, as he had done in the past, since he was in a far better position than the Committee to exert pressure on defaulting States, despite his recent reluctance to do so. It was not for the Committee to take on the role of debt collector. He believed that it would have to learn to live with the situation, as several countries in the world had decided that they were unable to pay their international financial contributions and paid only a minimal amount to the United Nations in order to retain their voting rights. Those countries were facing serious economic difficulties and the Committee could do nothing to alter that fact. Consequently, there was little point in repeated appeals to the General Assembly and the suggested contacts with other bodies, strategies to publicize the Committee's work or even a strike would be equally ineffective.

25. Mr. FERRERO COSTA said that two unrelated subjects were under discussion, namely, the Committee's financial crisis and its reporting system. He did not agree with Mr. Yutzis that the financial problems had a political cause. The 42 countries which had been in arrears prior to 1989, including the 24 which had never paid any contributions, were all developing countries but were not politically linked in any way. The General Assembly must be asked to urge them to meet their commitments and it should be stated that a repetition of the previous year's appeal had been necessitated by its failure to produce any results. The question of the Committee's procedures was a separate issue. He reminded members that the system of rapporteurs entrusted with the preliminary examination of individual reports had been adopted on a trial basis the previous year and it was necessary to decide whether or not to put the system on a more permanent footing at the current session. He thought the Committee should conclude the discussion of its financial problems before moving on to that subject. While he fully appreciated the sentiments behind the suggestion that some decisive action should be taken instead of passively accepting the

difficulties, that did not seem to him to be the correct approach, as it might prove counter-productive and would lower the standing and prestige of the Committee.

26. Mrs. SADIQ ALI expressed support for Mr. Aboul-Nasr's comments. As he had said, the failure of many countries to pay their contributions was the result of a global decision and it would be futile to expect that situation to change. She would therefore be in favour of requesting the Secretary-General to advance the funds from the regular budget and deduct them later from the contributions of the defaulting States.

27. Mr. YUTZIS said he was still strongly convinced that the issue was a strictly political and ethical one. The fact had to be faced that the decision by some of the more important States Members of the United Nations to reduce their financial contributions had provoked a crisis. It had also revealed the underlying problem, never considered during the era of prosperity, of the correlation between non-payment of contributions and non-submission of reports, and had demonstrated the hypocrisy of States claiming to support the Convention but failing to translate their words into deeds.

28. Although the Committee could repeat its earlier statement to the Third Committee, or perhaps even improve upon it, the Committee had in fact done practically all it could do, and it would be an illusion to think that the Secretary-General would advance the funds, which simply were not available, as the Comptroller had consistently stated.

29. It was also a fact that, the system for covering the Committee's expenses under the Convention was not working, and that problem should be seen in a wider context, since that system had been taken as a model by some States for other Conventions, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and was being considered by them in connection with the future Convention on the Rights of the Child.

30. In a word, he did not think that the current crisis could be resolved through a financial approach. What remained to be seen was whether the Committee, as the custodian of the Convention and not a collector of dues, would continue to function with or without certain States parties, or whether the Committee's work and the implementation of the Convention would be impeded by the failure of some States to fulfil their obligations.

31. Mr. BANTON asked for an explanation of the statement by the Under-Secretary-General for Human Rights that over 50 periodic reports were "pending", and wished to know how many more reports could have been considered at the current session had the Committee had more time available to it.

32. Mr. SHAHI, referring to Mrs. Sadiq Ali's question, requested the representative of the Secretary-General to inform the Committee whether the Secretary-General was in a position to finance the Committee's meetings and deduct contributions from defaulting States.

33. He did not think it would be useful to submit another draft resolution to the General Assembly for adoption. The Committee should reiterate in its report that it found it very difficult to discharge its mandate effectively under the Convention as long as the current situation continued. It would not be consonant with the dignity of the Committee to repeat that States parties were not fulfilling their obligations.

34. On the subject of the Committee's procedures, it must realistically be admitted, given the circumstances, that the Committee would not be able to hold more than one session a year. The rapporteur system had proved useful and should be continued. Committee members could be expected to take their duties seriously, and any fears that some might not read all the reports could be dispelled by appointing a larger number of rapporteurs.

35. Mr. GARVALOV said that since the Committee was a product of the Convention and of the decision of States parties to the Convention, those States parties must be clearly apprised of the serious situation the Committee now faced, since it was they who were primarily concerned and they who must provide an answer. He would suggest a different approach in the form of a letter addressed by the Committee, through its Chairman, to States parties, States Members of the United Nations and the Secretary-General. Resolution 43/96 adopted by the General Assembly on 8 December 1988 on the basis of a consensus had been a far cry from what the Committee had actually wanted, and the problem was whether the sponsors of a new resolution in the Third Committee could be persuaded to abandon the consensus procedure and propose a vote. With regard to the approach to the Secretary-General, it might well be argued in reply, and validly so, that strict compliance with the provisions of the Convention would prevent the Secretary-General from covering the expenses of the Committee out of the regular budget. The primary responsibility should therefore be laid on the States parties to the Convention, and it should be remembered that some of the major contributors were strongly in favour of coming to the Committee's assistance.

36. Mr. BESHIR said that, like many others, he was convinced that appeals to the States parties which did not pay their contributions would be to no avail, since theirs was a global decision concerning all international organizations and bodies. To his mind, the only approach was to pursue the contacts and dialogue with the Secretary-General and the General Assembly in the most constructive and appropriate way in order to persuade at least some of the defaulting countries to pay their contributions and so avert the danger threatening the whole of the human rights system.

37. The CHAIRMAN, speaking in his personal capacity, said that a decision by any State, even on grounds of debt or other economic considerations, not to pay its contributions to international organizations and bodies like the Committee as a matter of principle would be the gravest form of irresponsibility. Obviously, when countries like his own experienced very serious economic difficulties, their membership of international bodies had to be carefully discussed and rationalized in view of the heavy burden of overall contributions. Any State party to a treaty or convention had the sovereign right to denounce it, for whatever reason, including the financial burden at a particular time, and that indeed was the honourable, proper course for a country to take. As long as it remained a State party it would have an assessed contribution and in failing to pay that assessed contribution it would be failing in its obligations under the Convention and towards the other States parties. In many of those States, the problem was also, and perhaps even to a greater extent, one of inertia. He disagreed that nothing could be done and that it was futile to repeat past appeals. His experience of the United Nations system, in which he had great faith, was that with perseverence a solution could eventually be found, even at times of great difficulty and in the face of substantial opposition.

38. In response to Mr. Garvalov's suggestion that the Chairman should address a strongly worded letter to States parties, he reminded the Committee that such a course had been followed on several occasions, and that he himself had represented the Committee at the meeting of States parties. He regretted to have to say however, that there tended to be a lack of will, and indeed of efficiency, at those meetings, which were very short meetings attended by representatives at a relatively junior level. The Committee had also written to the Foreign Ministers of States parties. It was the Committee's responsibility to make its voice clearly heard, reiterating its earlier appeals. The problem of the failure by certain States to pay their contributions had existed from the outset, and the only reason why the situation had become critical was because the Secretary-General had stated that he was no longer in a position to advance the funds from the regular budget. It must also be remembered that, in its decision 1 (XXXVI) the Committee had recommended to the General Assembly that it authorize the Secretary-General to ensure the financing of the members' expenses only "until such time as a more permanent solution of the financial difficulties impeding the functioning of that Commitee is found". Who knew that the Committee was not functioning or had problems? If the Committee said nothing, no one else would. It had to keep repeating the fact, so that sooner or later someone would decide to resolve the issue.

39. He agreed with Mr. Partsch that it would not be enough simply to reiterate the draft resolution recommended to the General Assembly in decision 1 (XXXVI). The operative part of that draft resolution was still satisfactory, but the preamble needed amendment to bring out the fact that, in spite of the Committee's expectations, a significant number of States parties still had not paid their arrears.

40. Mr. YUTZIS proposed four measures which the Committee might adopt by consensus: the first was to address, as Mr. Garvalov had suggested, a letter to States parties which, in addition to raising the problem once again, would indicate the number of States that had not fulfilled their obligations. The Committee should, in the same letter, suggest that States in that category should not be allowed to vote or present candidates for election to office. The meeting of States parties might be the appropriate place to consider that question.

41. The second measure was to reiterate the draft resolution recommended to the General Assembly in Committee decision 1 (XXXVI) with the amendments proposed by Mr. Lamptey: no change was needed in the operative part, but the preamble might be improved. As a third measure, the Committee might take advantage of the forty-first session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to ask the Chairman, in the name of the Committee, to raise the matter in the Sub-Commission, a step that would have a considerable political impact. A fourth measure would be for the Committee to agree on an approach to the press and other news media with a view to publicity being given to the situation. If the Committee agreed, a working group might be set up to study the matter.

42. Mr. AHMADU suggested that, at the next meeting of States parties, some of the experienced members of the Committee might draw the attention of representatives of States parties to the importance of the payment of contributions. With regard to African States parties which were seriously in arrears, he agreed that the Committee should not take the line that the

responsibility lay elsewhere. There was a new, young, energetic Secretary-General of OAU, whose first task was to see that the contributions of OAU members were paid. He suggested that the Chairman should write a letter congratulating the new Secretary-General of OAU on the fact that his own country, the United Republic of Tanzania, which had formerly been in arrears, was now clear of debt. The letter could then draw the new Secretary-General's attention to the serious situation concerning the contributions of other States parties. In his view, the Secretary-General of OAU would take up the matter.

43. Mr. GARVALOV, clarifying his previous statement, said that he was in favour of the Committee addressing a letter to the Secretary-General of the United Nations, a uniform letter to States parties to the Convention and a uniform letter to States Members of the United Nations. One letter might be used for States parties and States Members of the United Nations and a slightly different version for the Secretary-General. In those letters the Committee should describe the worsening prospects for its further work in clear-cut language.

44. He was also in favour of submitting a new draft resolution for adoption by the General Assembly, similar to the one contained in decision 1 (XXXVI), clearly stating that the Committee was faced with the unprecedented prospect of being unable to meet the following year for lack of funds. The title of the decision recommending the draft resolution should refer not to the financial situation of the Committee but rather to the worsening prospects for its work.

45. Mr. FERRERO COSTA supported the proposal by Mr. Yutzis and Mr. Lamptey that the Committee should recommend a draft resolution to the General Assembly similar to that contained in decision 1 (XXXVI) but with the amendments suggested by Mr. Partsch and perhaps some modification of the title of the Committee decision, as suggested by Mr. Garvalov. He also agreed that a letter should be sent to States parties indicating the number of countries which had not fulfilled their obligations and urging them to do so. However, the question whether those States parties that had not fulfilled their obligations should not be allowed to vote or present candidates was a matter for discussion by the States parties, not the Committee, and should not be mentioned in the letter.

46. He saw no objection to the adoption of the suggestion by Mr. Yutzis that the Chairman should make a statement in the Sub-Commission on Prevention of Discrimination and Protection of Minorities, outlining the Committee's financial situation. In connection with Mr. Yutzis' fourth proposal for an approach to the press and news media, he suggested broadening the task of the proposed working group on that matter to include the activities of the Committee, other problems of a non-financial character and the celebration of the twentieth anniversary of the Convention.

47. Mr. ABOUL-NASR said that the Committee might agree on some of the proposals that had been made but not on others. He had heard no objection to the idea of addressing a letter to the Secretary-General. On the other hand, letters to States parties should be sent simply to those which were in arrears; there would be no point in sending them to all States parties. The suggestions regarding approaches to the Sub-Commission and the press would not, in his view, gain unanimous support in the Committee.

48. Mr. FOIGHEL said there was no reason why the Committee should not address a letter to the Secretary-General, but he doubted whether it was competent to correspond with States parties, particularly on issues that were not part of its substantive work. Moreover, it would serve no purpose, since the States parties knew of the problem already.

49. The CHAIRMAN said he could confirm that the Committee had authority to deal directly with States parties and had done so in the past. He agreed, however, with Mr. Aboul-Nasr and Mr. Ferrero Costa that the Committee was not competent to discuss the action States parties should take in regard to defaulting States. The Committee could simply make representations to the States parties.

50. He suggested that one working group should be set up to consider the necessary amendments to the draft resolution recommended to the General Assembly in Committee decision 1 (XXXVI) and to prepare the texts of the letters to be addressed to the Secretary-General and to the States parties. That working group would consist of Mr. Aboul-Nasr, Mr. Garvalov, Mr. Partsch and Mr. Yutzis, with Mr. Aboul-Nasr as convener. A second working group consisting of Mr. Ahmadu, Mr. Reshetov, Mr. Sherifis, and Mr. Song Shuhua, with Mr. Sherifis as convener, should be set up to consider the action to be taken on the conclusions and recommendations of the meeting of Chairpersons of human rights treaty bodies (HRI/MC/1988/1).

It was so decided.

The meeting rose at 1.05 p.m.

850th meeting

Monday, 21 August 1989
at 3.15 p.m.

Chairman: Mr. LAMPTEY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued) */

Eighth and ninth periodic reports of Sweden (CERD/C/158/Add.7 and CERD/C/184/Add.1)

1. The CHAIRMAN stated that Mr. Braunschweig had informed him that for health reasons, he could not attend the rest of the session.

At the invitation of the Chairman, Mr. Corell and Mr. Ekman (Sweden) took places at the Committee table.

2. Mr. CORELL (Sweden) introducing the two reports of his country, said that the eighth report (CERD/C/158/Add.7) which had been submitted in September 1987, gave an overall picture of how the Convention was applied in Sweden and the ninth (CERD/C/184/Add.1), submitted in January 1989, contained information that updated the eighth.

3. Both reports dealt primarily with the treatment of immigrants in Sweden. In 1988, refugees had accounted for almost half the immigration into the country, the other half being composed of members of the families of persons already living in the country. The small percentage remaining consisted of people taking up residence in Sweden for various reasons such as work or study. About 20,000 persons requested asylum in Sweden every year. It was the European country which, in proportion to its population, took in the largest number of refugees. It was also one of the countries that made the greatest financial efforts to ensure that refugees got the same treatment as other categories of the population.

4. Since the submission of the seventh report of Sweden (CERD/C/131/Add.2/Rev.1) in March 1986, an Ombudsman against Ethnic Discrimination had been appointed and an Advisory Committee on Questions concerning Ethnic Discrimination created under the Act against Ethnic Discrimination which had come into force on 1 July 1986. Their functions were described in detail in paragraphs 9 to 22 of the eighth report. A Special Commission against Racism and Xenophobia had also been appointed and its duties were described in paragraph 23 of the same report. It had completed its work in March 1987 and submitted its final report to the Government. In that report it reiterated the principle of equal treatment for immigrants and Swedes. It laid particular stress on the importance of continued efforts to provide employment and housing for immigrants and asked that high priority be given to education concerning ethnic relations. The Commission also suggested various legislative measures. Its report had been transmitted to various authorities, organizations and institutions and their comments were being studied by the Government.

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*/ Resumed from the 848th meeting.

5. Under an amendment to the Penal Code which had come into force on 1 January 1989, racist statements were now punishable even if they had not been made in public. Particulars on that subject were given in paragraph 7 of the ninth report. Under an amendment to the Act on Damages, which had come into force on 1 July 1986, victims of discrimination could be awarded damages for mental suffering in addition to compensation for economic loss. He cited a judgement delivered by the Supreme Court on 28 January 1989 whereby a person who had been racially insulted, Reyna Hernández by name, had been awarded damages.

6. With respect to discrimination on the labour market, he emphasized that the Act concerning Security of Employment prohibited discharge on grounds of ethnic origin; information on that subject was given in paragraph 47 of the eighth report. Furthermore, a court could invalidate a compact or a collective agreement between an employer and a trade union if it was in any way discriminatory: that matter was also dealt with in paragraph 47 of the eighth report.

7. The National Labour Market Board, pursuant to the 1986 Act against Ethnic Discrimination, had adopted a programme on immigrants which was described in paragraph 54 of the report. In fact, the Ombudsman against Ethnic Discrimination in the labour market had never established that such discrimination had in fact occurred. For their part, concerned organizations such as the Swedish Trade Union Confederation, the Federation of Salaried Employees in Industry and Services, the Swedish Employers' Association and the Swedish Immigration Board had published a booklet entitled "Immigrants in the Company" to combat that type of discrimination. Copies of the booklet had been distributed to Committee members. He added that the possibility of enacting special legislation against discrimination on ethnic grounds in the labour market had been considered but it had been decided that many relevant problems had already been resolved by the existing legislation and by the Act against Ethnic Discrimination, which had since been promulgated. The Special Commission against Racism and Xenophobia had suggested again that new legislation should be brought in but the Government had not yet taken a decision on that suggestion.

8. With regard to the situation of the Sami (Lapps), he referred to paragraphs 55 and 56 of the eighth report. He described the efforts of the Government of Sweden to compensate the Sami for the effects of the radioactive fall-out caused by the Chernobyl accident. Other measures besides the compensation included the transport of thousands of reindeer to uncontaminated areas. Special measures had also been taken on behalf of the Sami in the area of education and were described in paragraphs 144 and 145 of the eighth report. The Sami Law Commission appointed in 1983 had submitted its report to the Government in June 1989, recommending that a body elected by the Sami should be established to represent them in various areas and also that their traditional reindeer herding rights should be strengthened. Another recommendation was that the special status of the Sami as an ethnic minority and indigenous people should be codified in the Constitution.

9. The eighth report, paragraphs 59-76, gave an account of the measures taken by Sweden to restrict contacts with South Africa. In particular, an act prohibiting all trade with South Africa had entered into force on 1 July 1987; investments and loans had been restricted since 1979; since July 1986, no patents or manufacturing rights could be transferred to South African

companies; restrictions regarding air traffic and shipping had been in force since 1985; the export of weapons and ammunition to South Africa had been banned since 1977, and in 1985 that embargo had been extended to data processing equipment, cross-country vehicles and motor fuel; contacts in sport, culture and science had been restricted in accordance with the recommendations of the Nordic Programme for Action against South Africa (the 1982 and 1986 regulations requiring visas for South African nationals should be mentioned in that connection). He added that a considerable proportion of Sweden's bilateral development assistance went to the front-line States, to the Southern African Development Co-ordination Conference, and for humanitarian assistance to the African National Congress, South West Africa People's Organization and the victims of *apartheid*.

10. The position of the Government of Sweden concerning the banning of racist organizations was described in paragraphs 99-102 of the eighth report. The Special Commission against Racism and Xenophobia had proposed bringing in new legislation against that kind of organization but had submitted no draft so far. The proposals of the Commission had been referred to various organizations for their comments; the subject was therefore under debate.

11. In conclusion, he assured members that his delegation would do their best to answer questions about his country's two reports.

12. *Mr. YUTZIS*, rapporteur appointed for the preliminary examination of the eighth (CERD/C/158/Add.7) and ninth (CERD/C/184/Add.1) periodic reports of Sweden, said that the contacts he had had in Sweden in the past, in particular with the Lutheran Church and the University of Uppsala, had prepared him for the preliminary examination entrusted to him by the Committee. He stressed that the content of both reports and the participation of the delegation of Sweden testified to that country's interest in applying the Convention. Both reports met the requirements of that instrument and could even be called a model of presentation.

13. He would deal together with matters concerning articles 2 and 4. With respect to article 3 one must, he felt, recognize the positive nature of the measures taken by the Government of Sweden, in co-ordination with other Nordic countries, *vis-à-vis* South Africa in regard to weapons, the transfer of technology, trade relattions, cultural and sporting relations, assistance to the victims of *apartheid* and to the liberation movements, etc. However, the updated report [28]/ submitted by the Special Rapporteur, Mr. Ahmad Khalifa, to the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-first session revealed that the number of Swedish companies still trading with South Africa was relatively high. It would be desirable for the Committee to obtain fuller information on the efforts made to continue reducing such relations; statistics would be helpful in that regard.

14. With respect to article 4 of the Convention, he stressed that freedom of association in Sweden was seen from the viewpoint of a liberal system of law. It was considered as a natural right of the individual; some other legal systems, for example those based on Napoleonic Law (like that of his own country, Argentina) were more interventionist. In any case, the information provided in the reports submitted by it showed that Sweden was applying article 4 of the Convention almost to the letter. The measures reported in paragraphs 95-106 of the eighth report could be deemed satisfactory by the

Committee. Racist organizations were not banned but they were subjected to tight restrictions; in the future Sweden might, however, go still further and forbid such organizations. Paragraph 100 of the report cited an explanation by the Minister of Justice on the subject: in the second paragraph of that explanation it was stated that groups which conducted racist activities were met by "strong demonstrations of abhorrence which ... are probably considerably more important and effective than legislation". He felt bound, however, to point out that the values of a society could vary and that, for example, changed economic circumstances could alter attitudes. It was well known that when there was a crisis on the labour market, foreigners were often taken as the scapegoats. Too much reliance should therefore not be placed upon public opinion; legislative measures constituted much safer guarantees.

15. With reference to article 5 of the Convention, he asked whether the right to work was in fact recognized in Swedish legislation or whether that right was merely governed by market laws, which of course operated in response to changing short-term interests. Since the representative of Sweden had spoken of a new legal provision to combat discrimination in regard to dismissal, he would like to know whether Swedish legislation also contained any measures to provide protection against discrimination in regard to recruitment and whether everyone had access to the labour market under the same conditions.

16. With respect to the education of foreigners' children, he inquired whether there was any horizontal follow-up and how many of them completed primary, secondary and university studies. He also asked what was the situation of immigrants and refugees in particular with regard to housing. It would be helpful for the committee to be informed of the conclusions contained in the report of the Special Commission against Racism and Xenophobia because that would give it a clearer idea of the situation in the various areas which had been mentioned. Finally, he would especially like to know what was the attitude of the Swedes towards immigrants in neighbourhoods where there was a very high concentration of foreigners.

17. Concerning the application of article 6 of the Convention, he had tried to understand what role was played by the Ombudsman against Ethnic Discrimination in the field of employment and gathered that it was relatively limited. Paragraph 17 of the eighth report of Sweden stated that the main task of the Ombudsman was to combat ethnic discrimination against job-seekers, but paragraph 15 said that he was not empowered to institute legal proceedings. Article 6 of the Act against Ethnic Discrimination of 1 July 1986, which dealt with the Ombudsman's work methods, implied that his role was essentially a negotiating one. That article did not impose any real obligation on the employer to provide any information that the Ombudsman might need, because it said that "an employer must not be unnecessarily burdened with this obligation". He saw that as an indirect way of protecting the employer.

18. He welcomed the fact that the eighth report of Sweden provided additional information on the legal, judicial and administrative measures that had been taken to implement article 7 of the Convention as well as on the attitudes of the Swedes towards immigrants and on the measures taken to combat racist activities. He none the less noted from paragraph 83 of the report that in recent years various expressions of hostility had been observed, and from paragraph 92 that a number of decisions had recently been made in the district courts concerning racist items in local radio broadcasts. He would like to

know what were the underlying reasons that had led local radio stations to broadcast racist statements; he was most surprised that incidents of that kind could occur in a country like Sweden where legislation to combat discrimination was so advanced.

19. In conclusion, he thanked the Government and its representatives for the quality of the information supplied.

20. Mr. PARTSCH, referring again to what was said in the eighth report (CERD/C/158/Add.7) about the provisions of article 4 (b) of the Convention, expressed strong disagreement with the claim made by the Minister of Justice that the obligation imposed by the Convention to ban organizations with racist aims had in all essential points been complied with. Admittedly, freedom of association was sacred and should never be unduly restricted (in that connection it would be interesting to draw the attention of the Swedish Minister of Justice to the reservations entered by Austria, France and Italy). However, a balance had to be maintained between that freedom and the fight against racial discrimination. As long as Sweden had not found the means to put a stop to the activities of associations that encouraged racial and ethnic discrimination, the Committee would consider that it was not fully applying the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

21. He had been very interested to learn that the Special Commission against Racism and Xenophobia had already drafted its report and submitted proposals, though the executive had not yet taken a decision on them. He was glad it had been decided to use the more appropriate term "ethnic discrimination", instead of "racial discrimination" because "race" was generally used to refer to differences in colour, whereas in reality ethnic discrimination went much further than racial discrimination.

22. Mr. ABOUL-NASR stressed that, subject to the reservations enumerated in article 1, paragraph 2, the Convention asserted the right to equal treatment. However, he had noted that the table of contents of the booklet "Immigrants in the Company", distributed by the representative of Sweden, listed on the one hand a chapter 3, dealing with the employment of persons from other Nordic countries, and on the other hand a chapter 4, which dealt with the employment of persons from non-Nordic countries. It would appear that those two categories of persons did not enjoy identical treatment in the matter of employment and he would like to know why. If such a distinction did in fact exist, how could it be justified in terms of the Convention? Was it a distinction based on race? What authority was empowered to decide that one country was Nordic and another was not? On what criteria was that distinction made? Why should Finland, Germany or Iceland not be considered Nordic countries? In short, was there a difference in treatment between nationals of the Nordic countries and those of other European or non-European countries? Were foreigners or immigrants treated in exactly the same way in respect of entry into the country, visas, the right of abode or the right to work, whether they came from France, from Spain or from Tunisia to work in Sweden? When the eighth report of Sweden referred to nationals and non-nationals it sometimes used the term "foreign" and sometimes the terms "immigrant" or "refugee". Was each of those categories treated differently, or were such persons all considered as non-nationals and given identical treatment?

23. In conclusion, he congratulated Sweden, which had always been one of the most committed countries to the defence of human rights and the struggle against racial discrimination, for the considerable success it had already achieved in applying the Convention.

24. Mr. SONG Shuhua congratulated Sweden on its excellent eighth (CERD/C/158/Add.7) and ninth (CERD/C/184/Add.1) reports, both of which followed the pattern of presentation recommended by the Committee and contained much interesting information.

25. Concerning paragraph 83 of the eighth report, which dealt with immigrants and asylum-seekers, the reaction of the Swedish population to the arrival of such persons was difficult to determine. Some Swedes seemed rather in favour of discrimination whereas others were against it. He asked what measures, apart from those already adopted by the Government, were currently under study, because legislation influenced public opinion and the latter should be reflected in the legislation.

26. He appreciated the fact that the eighth report spoke of both racial discrimination and ethnic discrimination. Had any further measures been considered since the adoption of the eighth and ninth reports of Sweden to deal with cases of ethnic discrimination?

27. Referring to paragraphs 144 and 145 of the eighth report, which dealt in particular with the education given to Sami children to take account of their cultural specificity, he asked who supervised that teaching and whether it was imparted by the Sami themselves or by other persons. He would also like to know the percentage of Sami in the local administration of the region inhabited mainly by them. Lastly, he asked what was the population growth rate of the Sami, Chinese and Gypsy minorities in comparison with that of the Swedish population.

28. The eighth report said that economic development affected certain traditional trades and customs of the Gypsy population which had lost their market value, for example fortune-telling. How could the Government assist that population? Were there special schools where Gypsies could be given an education that would equip them to enter other professions? He would like to know what measures had been adopted in that connection and how the problem of the disappearance of the traditional occupations of the Gypsy population was being tackled.

29. Regarding paragraph 63 of Sweden's eighth report, where specific mention was made of South Africa and of Namibia, he felt that the two countries should not be placed on the same footing. He hoped that the next periodic report of Sweden would take account of the recent change in the situation.

30. Mr. RESHETOV said that, like Mr. Yutzis, he had for a long time been closely observing developments in the human rights situation in Sweden. The eighth (CERD/C/158/Add.7) and ninth (CERD/C/184/Add.1) periodic reports had greatly interested him, not least because of the spirit of self-criticism that they displayed. He had found the items of information about the Ombudsman against Ethnic Discrimination and the Special Commission against Racism and Xenophobia (CERD/C/158/Add.7, para. 10 *et seq*. and para. 23 *et seq*. respectively) particularly useful.

31. He noted from paragraph 93 of the eighth report that the Penal Code of Sweden made incitement to rebellion within the armed forces a punishable offence. He asked whether in Sweden there was any provision for replacing, where appropriate, military obligations by civilian service for conscientious objectors. A bill to that effect was now under study in the Soviet Union.

32. He agreed with Mr. Partsch regarding the refusal of the Swedish authorities to ban organizations with racist aims, as mentioned in paragraph 101 of the eighth report. He too felt that Sweden had not really fulfilled its commitments in that respect, for it seemed to him that, as was moreover shown by legal practice in, for example, Norway or the Federal Republic of Germany, States parties were bound to adopt legislation prohibiting the very existence of racist organizations. The question was a serious and complex one but, in the interest of eliminating racial discrimination, the State had to set reasonable bounds to freedom of association and expression.

33. Lastly, he drew attention to paragraphs 143-145 of the eighth report, dealing in particular with the teaching of their mother tongues to immigrant children. Paragraph 143 said that such teaching was not compulsory and he wondered whether the decision was left to the immigrants themselves. Paragraphs 144 and 145, which dealt with teaching given in the Sami language, said that such teaching was optional and that a number of Sami schools had even had to close because there were not enough pupils. He well understood that parents, in the interest of having their children integrated into Swedish life, should prefer them to be fluent first of all in Swedish, but it would be regrettable to encourage that trend if as a result the teaching of Sami would lapse. The day might come when the demand for it would become greater.

34. Mr. BESHIR also wished to congratulate the delegation of Sweden on having submitted two excellent periodic reports (CERD/C/158/Add.7 and CERD/C/184/Add.1). Sweden was unquestionably fulfilling its commitments under the Convention. It should be especially congratulated on never having compromised with a principle dear to it: that of granting political asylum to all who asked, despite the problems that attitude might entail for it.

35. Paragraph 92 of the eighth report mentioned some racist incidents that had occurred in connection with local radio broadcasts, who had actually been the guilty parties? The report which had just been published by the new Special Commission against Racism and Xenophobia would be invaluable to the Committee, which should ask to have the text of it.

36. There must exist in Sweden groups or non-governmental organizations that were active in promoting communication between the different ethnic groups, which sometimes came into conflict with one another. Had those organizations observed, for example, any anti-Swedish sentiment among certain ethnic groups? How, in their opinion was communication established between the different ethnic groups?

37. Regarding the Ombudsman, he asked how he was appointed and whether the appointment decision was political or purely administrative.

38. Mr. BANTON found with regret that in its eighth periodic report (CERD/C/158/Add.7) Sweden could have responded better to the questions asked when the seventh report (CERD/C/131/Add.2/Rev.1) had been considered. Those

questions related in particular to the training given to public officials, including the police, to cases where the social services removed children from the care of unfit parents (were such cases more frequent among children belonging to ethnic minorities?), to the educational attainments of children belonging to minorities, and to the housing conditions of immigrants. The reply given at the time had been that Swedes were not officially classified by ethnic origin and that such information could therefore not be provided, which was hardly convincing because the Swedish authorities were well informed about such matters and could find answers even if they could not obtain them from national registration data.

39. Like Mr. Yutzis before him, he found that Swedish legislation offered good protection against wrongful dismissals which might stem from racial discrimination but was still inadequate in respect of discrimination at the time of recruitment. He cited two cases where the court in the United Kingdom had delivered a judgement in favour of a black job-seeker because the employer's refusal to hire him appeared to be racially motivated. If the Swedish law did not provide similar remedies for job-seekers who felt they had been victimized and did not ensure just and adequate compensation for victims of discrimination, Sweden was not fulfilling its commitments under article 5, paragraphs a and e (i) and article 6 of the Convention.

40. Section 6 of the Swedish Act against Ethnic Discrimination which had come into force in 1986 (CERD/C/158/Add.7, annex I) stipulated only that the employer, if asked to do so by the Ombudsman against Ethnic Discrimination in the labour market must attend discussions and provide information; he was not even required to give the information under oath. The position of the Ombudsman against Ethnic Discrimination could be compared to those of the ombudsman for consumer affairs, for economic competition and for sex discrimination. Unlike the other three ombudsmen, however, he was not authorized to bring those accused of infringements to court. Victims of ethnic discrimination did not have as easy access to the labour court as the victims of sex discrimination, although the incidence of ethnic discrimination could well be higher. He supported Mr. Yutzis on that point and could not understand why, when human rights standards in Sweden were so high, the Swedish Government was reluctant to take legislative and judicial action to ensure equality of recruitment conditions.

41. The report of the Special Commission against Racism and Xenophobia whose forthcoming publication was announced in paragraph 3 of the ninth report had now come out and he had read it. It raised a number of questions that he hoped would be addressed in the tenth periodic report of Sweden. To ensure the effective application of article 4 of the Convention, the majority of the Commission's members recommended that the Government should adopt far more comprehensive legislation, but a minority maintained that it could be dangerous to drive racist organizations underground. The obligations stemming from article 4 of the Convention would therefore certainly be debated within the reporting State.

42. With respect to discrimination on the labour market and the damages to be paid to any victims, the Commission stated that article 5 of the Convention required the enactment of special legislation only if conditions in the country necessitated it to fulfil the aims of the Convention. As long ago as 1979 Mr. Partsch had expressed the opposite view in an article published in an international law journal. Article 5 of the Convention did admittedly

refer back to article 2 which gave the State party some latitude, but article 5 also made equality before the law mandatory. The evidence of racial discrimination on the Swedish labour market showed that the situation in the State party was such as to require the adoption of explicit legislation. The new Special Commission against Racism and Xenophobia was, furthermore, of the same opinion and had formulated a recommendation to that effect. Abundant information had been collected showing that in Sweden persons belonging to ethnic minorities had never been able to obtain employment corresponding to their qualifications.

43. Several members of the Committee had referred to the cases of incitement to racial hatred which had been observed in certain local radio broadcasts. In its report the Special Commission against Racism and Xenophobia mentioned that a number of cases had been duly brought before the courts, which had pronounced sentences of two months' imprisonment, in two cases and four months' in a third.

44. In 1987, Sweden had encountered a problem new to it when a local community had refused to allow 15 refugees to be resettled on its territory. The mass media had given the incident wide coverage, and that had perhaps led the public to believe that hostility towards foreigners was more frequent than social science research had shown it to be. Since many countries were increasingly reluctant to accept refugees and migrant workers, it would be helpful to the Committee if in its next periodic report Sweden could say what lessons it had been able to learn from that type of incident, with particular reference to the influence of the mass media and of political leaders.

45. In its report, the Special Commission against Racism and Xenophobia also gave figures on delinquency which showed that, quite apart from acts of racial discrimination and incitement to racial hatred, racially motivated offences were being committed throughout the country. There again it would be useful if in its next periodic report Sweden could state whether criminal proceedings under the present law were effective in reducing the incidence of such offences and whether the new legislation would be conducive to progress in that area.

46. In paragraph 57 of its eighth periodic report, Sweden declared that "racial segregation and *apartheid* do not exist in Sweden", as if segregation was the same as *apartheid*. The Committee itself was divided on the scope to be given to article 3 of the Convention, under which States parties condemned segregation and *apartheid* and undertook to eradicate practices of that "nature". For some, who subscribed to a narrow interpretation, practices of that "nature" meant cases where segregation was applied by the State, so that States would not be required to report on other forms of segregation such as residential segregation. For others, who advocated a broader interpretation, segregation took many forms ranging from the kind wholly conceived and practised by the State itself to the kind exemplified by certain religious communities that practised self-segregation. In the view of those who advocated the broader interpretation, *apartheid* would not have lasted so long if the State had not been in a position to exploit the differences that existed between groups within the same population, and also to exploit the relationships between the groups in regard to the division of labour and to economic processes. He personally felt that the State was required to report on such matters, in particular when certain forms of segregation were likely to be conducive to discrimination.

47. He cited the instance of a Stockholm suburb where a few years ago 65 per cent of the population had been of foreign descent. In the primary schools the percentage of Swedish children was declining yearly. That was an obvious case of residential segregation resulting from the operation of the housing market, which assigned some residential areas to well-to-do families and others to families that were less so, the latter being immigrant families. In that particular suburb, some 100 languages were now spoken. The Swedish Minister of Education in particular must be watching the situation with some concern, because the settlement problems of a community of first generation immigrants could sometimes be transmitted to the second generation. It was also the type of situation that the Committee ought to be monitoring. However, in Sweden social science research was of very high quality and the possible adverse consequences of residential segregation would not be overlooked. That was another of the points on which he hoped Sweden would provide information in its next periodic report.

48. Mr. FOIGHEL stressed that Sweden addressed all international problems from a humanitarian point of view. He had himself benefited from that tradition, for he had been accepted as a refugee by Sweden between 1943 and 1947. The Government of Sweden had obtained appreciable results in regard to the application of the Convention.

49. The Committee had been informed that there were 20,000 asylum seekers in Sweden. He wondered whether that figure related to the year 1988 only, how many asylum seekers had been granted refugee status and, of those accorded the right of permanent residence, how many had been accepted under the policy of reuniting families.

50. The relationships between the Ombudsman against Ethnic Discrimination and the courts were not very clear to him. He would have liked to know whether the Ombudsman took the place of the courts, whether his activities complemented theirs or whether, on the contrary, a person who considered that he had suffered injury laid the matter before a court after the Ombudsman had given his opinion. Another possibility was that the institution of Ombudsman was designed only to give citizens fuller protection, or that it merely constituted a new procedure, additional to the existing ones, for demanding redress.

51. The amendment to chapter 6, section 8 of the Penal Code, whereby any "racist statement" was henceforth a punishable offence, raised questions in regard not only to freedom of association but also to the principle of freedom of expression. It was in fact very difficult to reconcile the need to safeguard freedom of expression with the penalization of a racist statement. He would be grateful if the delegation of Sweden could state whether the question had been debated in Parliament when the draft amendment had been considered.

52. Mr. SHAHI thanked the delegation of Sweden for the very informative presentation of its eighth and ninth reports (CERD/C/7/158/Add.7 and E/CERD/C/184/Add.1) which described the very progressive measures taken in Sweden to implement the Convention.

53. He wondered what exactly were the powers of the Ombudsman against Ethnic Discrimination and in particular whether they did not overlap those of the Advisory Committee on Racial Discrimination. That Committee apparently

functioned as an appeals body but the demarcation line between the competence of the two institutions was not very clear to him. The same question arose with respect to the Special Commission against Racism and Xenophobia.

54. Mr. YUTZIS wished to supplement his statement by some comments relating to article 5 of the Convention, and more precisely to paragraphs 128-130 of the eighth report (CERD/C/158/Add.7), concerning the place of religious education in compulsory schooling. That question could be an important one for ethnic groups or for individuals belonging to minorities. It was surprising to read in paragraph 128 that "the religious heritage which many immigrants bring with them is a valuable contribution to these questions". If the questions referred to concerned Swedish culture, that statement needed some clarification. Furthermore, in paragraph 130 it was stated that a pupil could be excused religious instruction, but subject to certain conditions, for example if he could prove that the community to which he belonged provided him with the required education. It was difficult not to wonder about the compatibility of such a condition with the principle of freedom of religion.

55. Mr. PARTSCH, speaking on a point of order, submitted that consideration of religious discrimination was not within the terms of reference of the Committee.

56. The CHAIRMAN replied that, since religious education had been addressed in the report of Sweden, Committee members were at liberty to make comments on the subject. Mr. Partsch himself had raised questions which other members might have considered to be outside of the province of the Committee.

57. Mr. YUTZIS pointed out that, on the one hand, the Convention contained a provision guaranteeing freedom of thought and expression - which included freedom of religion - and that on the other hand it dealt with that question only in so far as it related to specific minority groups. Thus, among the refugees resident in Sweden there must surely be South Americans who were Catholics and Africans who might be Muslims or animists, for example. Since the Swedish Government had seen fit to devote three paragraphs of its eighth periodic report to the matter, the Committee was entitled to ask for further particulars, especially concerning the information given in paragraph 130, which seemed at first sight to indicate that rather stringent conditions were applied.

The meeting was suspended at 5.25 p.m. and resumed at 5.40 p.m.

58. Mr. CORELL (Sweden) said first of all that he did not have the necessary information to provide the details requested concerning trade relations between Swedish companies and South Africa. That information would therefore be given in the next periodic report.

59. Regarding article 4 of the Convention, it must be realized that Sweden had a very liberal policy in respect of freedom of association. The only condition that had to be met by any group of persons wishing to form an association was to draft statutes and appoint a governing body in order to obtain legal personality. The discussions that had taken place in Sweden about the desirability of expressly forbidding the formation of racist organizations were particularly interesting. For example, those against prohibition pointed to the fact that one of the main principles governing social life in Sweden was opposition to any interference in the creation and

existence of associations. In any case, however, the Government was aware of the problem and, by establishing its Special Commission against Racism and Xenophobia, had demonstrated its determination never to lose interest in the matter.

60. The amendment to chapter 16, section 8 of the Penal Code whereby any racist statement, even one made within an organization, was now a punishable offence, had given rise to rather divergent comments. It must be realized that the effect of that legislation was to prevent any racist activity within organizations or groups, without however banning the organization as such. Such a provision could be regarded as complying with article 4 of the Convention.

61. Regarding article 5, one member had expressed concern as to whether the right to work was guaranteed as such, for example whether it could be invoked in a court. The right to work was not strictly speaking stipulated in Swedish legislation but, like any other country, Sweden endeavoured to guarantee employment for all its nationals. The economic situation was not always such that full employment could be ensured, but Sweden's unemployment rate was very low in comparison with other countries. In any case, it was stipulated in the Constitution that the Government was responsible for guaranteeing the right to work, housing and education.

62. With respect to housing conditions, one member had pointed out that 130 languages were spoken in the suburbs of Stockholm, but the delegation of Sweden could not say whether it considered that as a positive or a negative factor. Sweden, a small country of 8 million inhabitants had in the last 20 years, taken in a considerable number of immigrants whom the authorities had done their best to spread out over the country without, however, exerting any pressure on them. That being so, the immigrants favoured the big cities, particularly as they wanted to be close to their compatriots, which was why Stockholm's suburbs had a very large number of immigrants.

63. The institution of Ombudsman against Ethnic Discrimination had been the subject of several questions, particularly concerning its responsibilities, which some members appeared to think were limited. In setting up that institution the Swedish authorities had not intended to give the person concerned the same powers as the parliamentary ombudsman or the ombudsman to combat discrimination against women. It had been designed simply as a means of dealing with questions that generally arose in employers' and employees' organizations, so as to determine whether the present legislation was adequate or whether other, stricter measures should be taken. If the Ombudsman against Ethnic Discrimination, unlike the other ombudsmen, did not have the absolute right to demand information, it was because there were certain areas where secrecy was necessary, for example foreign affairs, defence and some industrial sectors.

64. The powers of the Ombudsman were enumerated in annex I of the eighth periodic report (CERD/C/158/Add.7), which showed how they differed from those of the Advisory Committee on Questions concerning Ethnic Discrimination.

65. The purpose of local radio stations was to give the many small associations of every kind existing in Sweden a means of expressing themselves. There was no censorship in Sweden and any association which so requested could be allocated a frequency to broadcast on medium waves. It was regrettable that some associations should have used the air waves for broadcasts that were incompatible with the law, making those in charge guilty of a penal offence.

66. He would answer the other questions at the next meeting.

The meeting rose at 6 p.m.

851st meeting

Tuesday, 22 August 1989
at 10.15 a.m.

Chairman: Mr. LAMPTEY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (*continued*)

Eighth and ninth periodic reports of Sweden (CERD/C/158/Add.7 and CERD/C/184/Add.1 (concluded)

At the invitation of the Chairman, Mr. Corell and Mr. Ekman (Sweden) resumed their places at the Committee table.

1. Mr. CORELL (Sweden), replying to Mr. Yutzis' question on the numbers of emigrant children admitted to secondary school and university, said he could not give a precise answer, mainly because the latest influx of immigrants had not yet passed through the stage of university admission. However, many refugees to Sweden from the Baltic States during the Second World War were now prominent citizens in Swedish society, and he had no doubt that the same would one day be true of the children of the present immigrants. The Government was fully aware of the importance of giving immigrants an education equal to that given to Swedish children.

2. Mr. Aboul-Nasr had asked with reference to the booklet "Immigrants in the Company" distributed at the previous meeting whether Nordic citizens were treated more favourably than citizens of other countries. The answer was yes, but that situation was acceptable: since remote times there had been close contacts between the five Nordic countries, Norway, Sweden, Denmark, Iceland and Finland, which to a certain extent understood each other's languages. In many respects the Nordic countries formed a common labour market: every Nordic citizen had the right to accept employment freely and reside in any other Nordic country. That situation resulted in a form of positive discrimination which was permissible under the Convention. Mr. Aboul-Nasr had also asked whether citizens of non-Nordic countries, for example, a Frenchman and a Tunisian, were given equal treatment in Sweden. The answer was unequivocally yes. With regard to the difference between the terms "foreigners", "immigrants" and "asylum-seekers", as used in the report, foreigners were those who were not citizens, including tourists, immigrants or asylum seekers; immigrants were those who had entered the country and applied for permission to reside there. A Swedish citizen might be considered an immigrant if he had originally come to Sweden from another country. Asylum-seekers were those seeking asylum under the 1951 Convention relating to the Status of Refugees.

3. In reply to the question by Mr. Song Shuhua on the administration of Sami schools and the proportion of Sami in local administration, he said that on several occasions the Swedish Parliament had declared that the Sami must have a choice of two equivalent educational alternatives at compulsory school level: Sami schools and regular compulsory schools. The Sami schools were headed by a special Sami school board consisting of nine members appointed by the Government, including five Sami representatives, so that the Sami had a majority on the board. The Sami Law Commission had proposed that the new representative body to be set up for the Sami should exert some influence on a matter of such importance to Sami education, and had therefore recommended

that the Sami representatives on the Sami school board, including the Chairman, should be appointed by that new body. With regard to the proportion of Sami in local administration, it must be borne in mind that the estimated Sami population was between 15,000 and 20,000 out of a total Swedish population of eight and a half million. Many Sami lived in Stockholm or Gothenberg; only 2,500-2,700 were involved in reindeer herding. It was hard to say how many Sami of this small part of the population took part in local administration.

4. In reply to the question by Mr. Song Shuhua on Namibia and South Africa, he said that there had been many developments since the eighth report had been drafted in 1986. At present there were 50 Swedish policemen serving in Namibia.

5. Mr. EKMAN (Sweden), replying to the question by Mr. Song Shuhua about the existence of training schools for gipsies and other persons from minority groups who had lost their traditional openings for business activities, said that like any other person in Sweden, a gipsy could be given labour-market training organized by a special government board. The conditions were that the person concerned was unemployed or risked being unemployed or found it difficult to enter the labour market; that he or she was 20 years of age, registered at the employment office as seeking employment, and in the opinion of that office needed training to obtain regular employment. Besides labour market training, other kinds of economic support were available to the unemployed in general.

6. Mr. CORELL (Sweden), replying to Mr. Reshetov's question about the alternatives to military service in Sweden, said that Swedish Act No. 413 of 1966 on alternatives to military service stipulated that where a person liable to military service had serious personal convictions which prevented him from fulfilling that service, he could undertake an alternative form of service. Sweden had played an active part in the discussion of legislation of that kind in various countries. The subject had been extensively considered in the Council of Europe and had been brought to the attention of the Commission on Human Rights; it had also arisen in the Conference on Security and Co-operation in Europe.

7. Mr. Reshetov had drawn attention to the fact that Sami school education and education for immigrants in their mother tongue were not compulsory. Although there was an interest in keeping the knowledge of those languages alive, people could not be forced to participate in such education. The possibility was offered, but parents and children must be free to choose.

8. With regard to Mr. Beshir's question on antipathies within groups of immigrants and intercommunication between those groups, he stressed three points: first, the Government was very conscious of the risk of friction between different groups of immigrants and had therefore set up an Advisory Council on Immigration Policy in 1975 with representatives of various immigrant groups. That body, which was attached to the Ministry of Labour and was headed by the Minister in charge of immigration affairs, provided a forum. Secondly, since there was freedom of association in Sweden, different immigrant groups could form any umbrella organization they wished. Thirdly, it had been observed that there might be confrontations between groups of immigrants in the event of developments causing strong differences of opinion in the country of origin, but not much could be done about such situations.

9. With regard to the Ombudsman against Ethnic Discrimination, the appointment was not political: he was appointed by the Government, but had to exercise his authority in accordance with the law. The present Ombudsman, Peter Noble, a well known Swedish barrister and expert on refugee matters, was one of the most outspoken critics in Sweden and had been appointed for that reason: he was totally independent.

10. Mr. Banton had referred to the possible problems that might be faced by 276,000 children of immigrants in the future. The Government was fully aware that there might be problems but an answer to the question would call for the preparation of a sociological report on a scale totally disproportionate to the information provided in the rest of the report. It was difficult for his Government to answer questions unless they were precise.

11. With regard to the examples quoted from the United Kingdom of a coloured man compensated for having been refused a job and a prisoner awarded damages because he had not been allowed to work in the prison kitchen, as a lawyer he hesitated to answer hypothetical questions but he thought that, if such cases arose in Sweden, it would be possible to secure the conviction of the persons responsible under the Swedish Penal Code; the person responsible in the prison would certainly be sentenced for abuse of authority. However, the best solution for Sweden might be to leave such issues to the Labour Market bodies, which might be in the best position to combat that kind of discrimination.

12. The Ombudsman against Ethnic Discrimination did not have the right to require information under oath because, as he had said at the previous meeting, that was not in accordance with the rules governing the Ombudsman's office. Those rules might be changed in the future.

13. Mr. EKMAN (Sweden), replying to Mr. Foighel's question concerning the number of asylum-seekers who had received residence permits, said that about 20,000 persons a year applied for asylum and that in 1988 just over 16,000 with a refugee background had received residence permits, of whom one third were refugees under the 1951 Convention. Another 15,000 persons who were related to people already living in Sweden had also received residence permits in 1988. Altogether, around 33,000 persons had received residence permits.

14. Mr. CORELL (Sweden), replying to Mr. Foighel's question on the relation between freedom of association and the limitation of the freedom to communicate, said that there had been discussions in Sweden on that subject and referred to the first paragraph of chapter 2, article 1, of the Swedish Constitution, quoted in paragraph 127 of the eighth periodic report (CERD/C/158/Add.7). Freedom of expression was not unlimited in Sweden. Under article 13 of the Constitution, it could be restricted on account of safety of the realm, the national economy, public order and security, the integrity of the individual, the sanctity of privacy, and the prevention and prosecution of crime. The provisions on agitation against an ethnic group could be looked upon as a limitation of the right to freedom of expression. A particular part of the question related to freedom of the press. The Freedom of the Press Act contained in chapter 7, article 4, of the Constitution laid down that, with due regard to the purpose of universal freedom of the press, as set forth in chapter 1, any representation should be considered as punishable by law if it involved, as set forth in sub-paragraph 8, threats against or contempt for a group of people of a particular race, skin colour or national or ethnic

origin, or of a particular religious confession. If such statements were printed or broadcast, the editor or responsible journalist would be punishable. Sub-paragraph 8 had become sub-paragraph 11 as a result of the most recent changes in the legislation.

15. In reply to Mr. Shahi, he said that the possible overlap between the spheres of competence of the Ombudsman against Ethnic Discrimination, the Advisory Committee on Questions concerning Ethnic Discrimination and the Special Commission Against Racism and Xenophobia was further evidence of the seriousness with which the Government regarded those questions and of its efforts to find the best steps to deal with them.

16. In reply to Mr. Yutzis, who had asked with reference to paragraph 128 of the eighth report why the compulsory school curriculum contained a sentence to the effect that the religious heritage of immigrants was a valuable contribution, he said that Sweden had originally been a heathen country and had then become Catholic. After it had been decided in 1593 that it should become Lutheran, there had not been many possibilities for people of other religious communities to practise their religion in Sweden. The Conventicle Act had prohibited association for the purpose of conducting religious services; that Act had not been repeated until 1858, after which freedom of religion had gained ground. Sweden had acceded to the International Convenant on Civil and Political Rights. However, education was obligatory; boys might otherwise spend their time playing soccer. Exemption from attendance was granted only if it could be proved that the child was being educated by its parents, or in another school founded by its parents together with others, practising another religion. The aim was to see that no children were excluded from religious education.

17. With regard to the question on South Africa, he agreed with Mr. Yutzis that it deserved thorough examination and would therefore be answered in the next report.

18. Mr. SHAHI thanked the Swedish representative for his full reply. He asked whether the compulsory school curriculum, by declaring that the knowledge of the Christian religion should be broadened on the basis of the Bible, was not considered incompatible with the separation of Church and State in Sweden.

19. Mr. BANTON said he had not received an answer to that part of his question concerning possible discrimination in recruitment to positions in the labour market and arrangements for just and adequate reparation in the event of such discrimination, as required by article 6 of the Convention.

20. Mr. CORELL (Sweden), replying to Mr. Shahi, said that the curriculum in Sweden was considered compatible not only with Sweden's international obligations but also with the relationship between Church and State in Sweden. There had been historically close ties, and the Church was a State church. Many took the view that the ties between Church and State should be severed, but the question was difficult, since those ties were very old.

21. In reply to Mr. Banton, he said that no arrangements of the kind he had mentioned existed under Swedish law at present, but the Ombudsman had said he had not discovered any such discrimination. If it occurred, other measures would be taken, but if the question of appointments to particular positions

was brought under the aegis of the courts, the system of recruitment would become very formalized and the operation of the entire labour market would become a matter for the courts. Special rules applied to civil servants, who did have the right to have their cases examined, but that was not true of the labour market as a whole. Opinions on the subject were mixed; the Swedish trade union congress was in favour of further study of the question, whereas employers took a negative attitude.

22. Mr. ABOUL-NASR, referring to the statement by the representative of Sweden that citizens of Nordic countries were treated better than persons from non-Nordic countries, said he was not sure whether that sort of preferential treatment was compatible with article 1 of the Convention. He had some doubts in that regard, but thought that the Committee should consider the question at some future date.

23. Mr. PARTSCH noted that there was a whole series of provisions in international trade law concerning most-favoured-nation treatment. If Mr. Aboul-Nasr was right, the whole system of most-favoured-nation treatment in international law would collapse.

24. Mr. ABOUL-NASR stressed that while he had no firm views on the point he had raised, he thought that the Committee should look into it.

25. Mr. RESHETOV said that he too thought that the point raised by Mr. Aboul-Nasr was important and noted that it had been discussed in regional and sub-regional groups.

26. He did not agree with Mr. Partsch and thought that there was no parallel between the situation in the field of human rights and that of international trade. Agreements might be reached in the trade sector with regard to all sorts of conditions. In the area of human rights, however, there was a system of norms enshrined in the Convention and in the International Covenants. In that connection he had written a book in 1979 in which he had pointed out that where there was a conflict between national norms and international norms, those in the international instrument clearly took precedence. Unfortunately, with regard to regional norms there were exceptions and gaps. Therefore, he thought that it was not appropriate to draw analogies between international trade law and international standards in the field of human rights.

27. The CHAIRMAN, noting that Mr. Aboul-Nasr had said that he had some doubts about the point raised and that the Committee should discuss it at some time in the future, appealed to members to revert to their consideration of the report of Sweden.

28. Mr. SHERIFIS said that Sweden could be proud of its record in the field of human rights.

29. Mr. FOIGHEL said that he would heed the Chairman's appeal but thought that the Committee should at some time in the future take up the point raised by Mr. Aboul-Nasr.

30. Mr. AHMADU said that he associated himself with the comments made by Mr. Sherifis concerning the report of Sweden.

31. Mr. RESHETOV said that he also wished to associate himself with the view expressed by members concerning the high standard of Sweden's record in the human rights field. It was a country which had a longstanding democratic tradition. However, there was a minor point he would like to have clarified. It seemed that a pupil who was an atheist could be required to participate in religious education classes.

32. The CHAIRMAN pointed out that the first sentence of paragraph 130 and the second sentence of paragraph 131 of the eighth report would apply in the case of an atheist, who would therefore be granted an exemption.

33. In response to a point raised by Mr. YUTZIS concerning the second sentence of paragraph 130, Mr. CORELL (Sweden) drew attention to paragraph 131 of the eighth report and said that he would endeavour to ensure that the situation regarding exemption from religious education was described in greater detail in his country's next report.

34. The CHAIRMAN expressed the Committee's appreciation for the efforts made by Sweden in combating racial discrimination and promoting human rights in general. He thanked the representatives of Sweden for their frankness and participation in the work of the Committee and said that members looked forward to the country's next periodic report. The Committee had thus concluded its consideration of the eighth and ninth reports of Sweden (CERD/C/158/Add.7 and CERD/C/184/Add.1).

Mr. Corell and Mr. Ekman (Sweden) withdrew.

Ninth periodic report of Nigeria (CERD/C/148/Add.25)

At the invitation of the Chairman, Mr. Sanyaolu (Nigeria) took a place at the Committee table.

35. Mr. SANYAOLU (Nigeria), introducing the ninth periodic report of Nigeria (CERD/C/149/Add.25), said that during the period under consideration Nigeria had continued its efforts to protect the right, dignity and worth of the human being, thus maintaining the tenets of the International Convention on the Elimination of all Forms of Racial Discrimination.

36. He then read out paragraphs of the report describing the new administration and the status of some constitutional provisions and containing information relating to articles 2 and 3 of the Convention. He also drew the Committee's attention to the cases listed in the report which demonstrated that citizens were able to go before the courts and that where judgements were adverse to the Government, it complied with them. Note should also be taken of the information provided under article 7, which showed that efforts were being made to improve the living standards of ethnic groups as well as housing and services and to reduce unemployment.

37. Mrs. SADIQ ALI, speaking as rapporteur entrusted with the preliminary examination of the ninth periodic report of Nigeria (CERD/C/149/Add.25), said that the report was a little disappointing in view of Nigeria's great religious and ethnic diversity and high level of education. In particular, it did not answer some of the questions raised during discussion of the eighth report (CERD/C/118/Add.14) and had not provided information on the ethnic composition of the population. She was aware of the difficulty of obtaining

precise statistics but hoped that the census scheduled for 1991 would produce reliable data on ethnic composition, since such information was vital to the Committee in understanding the problems of a pluralistic country like Nigeria and appreciating the relative proportions of Christians in the south of the country and Muslims in the north.

38. While the Government had already established two new states carved out of the present Kaduna and Cross Rivers states, the political bureau had recommended the speedy creation of six further states. The President had said that the number of states in Nigeria should remain at 21, but state creation seemed likely to be a major political issue in Nigeria when civilian government was restored. She asked whether states would be established in response to ethnic, linguistic or religious demands and inquired as to the availability of information on the demographic composition and ethnic representation of existing states.

39. Paragraph 19 of the report stated that the Committee's comments on full compliance with article 4 of the Convention had been conveyed to the appropriate authority and she hoped that the following report would contain a response to those comments.

40. The report did not satisfy members' requests for further information on the dissemination of the principles and objectives of the Convention and other human rights instruments and the existence of university courses on those topics. It was also somewhat out of date, since it did not mention the current review of the 1979 Constitution. A constitutional Review Committee had been set up to return the country to civilian rule by 1992. Furthermore, the report did not follow the Committee's guidelines. Paragraphs 27 to 29 were related to article 2 rather than article 7 and the section from the latter half of paragraph 14 to the end of paragraph 18 should have been included under article 5, not article 3.

41. As Nigeria was preparing for the end of military rule, she requested information on the implementation of article 2, paragraph 1 (c), of the Convention, which referred to a review of governmental, national and local policies. She also asked for details of the measures being taken to defuse the "ethnic, religious and linguistic tensions" mentioned in paragraph 3 of the report.

42. The Constituent Assembly was responsible for drafting and ratifying the Constitution under which Nigeria would return to full civilian government in 1992. She asked why the Government had removed Sharia from the list of debatable items in that Assembly, leaving it in the hands of the military. She asked whether that decision complied with article 5 (d) (vii) of the Convention and requested information on the status of the Islamic Courts in the 11 northern Nigerian States and on the possibility of their extension to other regions.

43. She asked whether the Assembly's decision to lift the ban on party politics and permit the registration of two political parties might not result in a north/south, Muslim/Christian dichotomy.

44. With reference to article 3 of the Convention, she said that Nigeria played an outstanding role in the anti-apartheid movement and was an inspiration to others. However, she requested details of the case of

Dr. Patrick Wilmot, reportedly deported for criticizing Nigerian businessmen who sold Nigerian oil to South Africa, and she asked what action had been taken against those businessmen.

45. In April 1987, clashes between Muslims and Christians in Kaduna State had led to 12 killings and approximately 700 detentions. Under Nigerian law, a person was innocent until proven guilty but on that occasion the security forces had beaten and tortured suspects, most of whom had been minors, in flagrant violation of article 5 (b) of the Convention. She requested information on the treatment of the detainees and asked how quickly they had been brought before the relevant military authorities and whether any action had been taken against the offending members of the security forces.

46. She also requested information on the judicial inquiry into the deaths of 24 convicts during a prison riot on 6 May 1987 in Benin prison and referred to the reports of hundreds of condemned prisoners awaiting execution in overcrowded prisons. The Minister of Internal Affairs had stated in September 1988 that 27,860 prisoners of the total prison population of 58,000 were awaiting trial and she asked what action was being taken to expedite those trials. She also requested clarification of the phrase "acts prejudicial to public order" in paragraph 20 of the report, so that the Committee could judge whether the relevant Nigerian legislation was in conformity with the Convention.

47. Paragraph 3 of the report referred to the repeal of Decree No. 4 of 1984, which had restricted the freedom of the press. She would therefore like to know the reason for the temporary ban which the Government had placed on the journal Newswatch on 25 April 1987. She also referred to reports of the interrogation and detention of editors and reporters who published stories to which the Government objected and drew attention to allegations of harassment of editors and publishers by the security forces.

48. The Government had banned the National Association of Nigerian Students (NANS), suspended the Nigerian Labour Congress (NLC) and proscribed the Academic Staff Union of Universities (ASUU) by a decree of July 1988. She requested an explanation of those actions, which contradicted the statement in paragraph 22 of the report that "the right to join trade unions, social and professional organizations is guaranteed by the 1979 Constitution" and seemed incongruous at a time when Nigeria was moving towards a return to civilian government.

49. According to a joint commission which had met in May 1987, the dual nationality of a number of citizens of Benino-Nigerian origin had increased the difficulty of combating illegal traffic and immigration. She asked if any steps had been taken to resolve that problem and also requested an explanation of the presence of Cameroon troops in Bornu state and the border clashes in that area. She asked whether there were problems with the demarcation of the border or with transnational ethnicity.

50. With reference to article 6 of the Convention, she would like to know the extent of the Nigerian Aid Council's legal assistance to members of the indigenous populations, particularly in any cases of racial discrimination.

51. She stressed the importance of article 7 and the role of education in promoting respect for human rights and fundamental freedoms, especially among

teachers, magistrates and the police. She hoped that Nigeria would study the Committee's guidelines on article 7 and that its following report would provide a clearer picture of the situation in the country.

52. Mr. BESHIR said that Nigeria was a very important country, which played a leading role in African affairs, hence there was great interest in its attitude to human rights in general and its implementation of the International Convention on the Elimination of All Forms of Racial Discrimination in particular. Nigeria's prominence in the anti-*apartheid* campaign was recognized and applauded throughout the world but there was some concern about human rights in Nigeria itself, as the country had been ruled by a succession of mainly military governments since becoming independent. He requested information on the country's current régime and the alliance between the military and civilian groups. He would like to know what the nature of the relationship was between the Armed Forces Ruling Council (AFRC) and the Federal Government and which of the two had ultimate authority. Similar situations existed in other African countries and they were eager to learn from Nigeria's experiences.

53. Paragraph 24 of the report (CERD/C/149/Add.25) stated that constitutional provisions for freedom of religion, religious practice and religious education were "generally respected throughout the country". He requested a definition of the phrase "generally respected", which he considered somewhat ambiguous. The paragraph went on to say that religious travel, including the pilgrimage to Mecca, was permitted and in some cases officially supported. He asked whether the phrase "in some cases" implied a form of discrimination.

54. Paragraph 26 was also ambiguous and did not give a clear picture of the real situation in the country. He asked for precise details of the "greater ethnic and religious diversity" said to be reflected in the composition of the current Government and of the present military administration's policy, which was described as "geared towards" the goal of human rights. He asked whether the Amnesty International office in Lagos was registered as a Nigerian or an international office.

55. He commended the policy of distributing oil wealth referred to in paragraph 27 but asked for clarification of the phrases "disadvantaged groups", "special privileges" and "adequate development". He would also like details of the School to Land programme mentioned in paragraph 29 of the report.

56. Mr. SHAHI deeply regretted the fact that the demographic information requested during discussion of the eighth periodic report of Nigeria had not been provided.

57. The ninth report (CERD/C/149/Add.25) stated that the Armed Forces Ruling Council (AFRC) and the National Council of Ministers were the country's two governing bodies. He asked for details of the representation of various ethnic groups within each of those bodies.

58. Although Nigeria was a federation, the military régime's system of government meant that it closely resembled a unitary State, since provincial governors were members of the armed forces and therefore directly responsible to their Chief of Staff, the President. He asked whether the system ensured that all ethnic groups were adequately represented in provincial governments.

He was aware that Nigerian domestic legislation could not comply with all provisions of the Convention until civilian government had been restored.

59. Mr. FERRERO COSTA shared the disappointment expressed by Mrs. Sadiq Ali that the ninth report (CERD/C/149/Add.25) of Nigeria provided so little information and did not answer questions raised by the Committee during previous discussions. He hoped that the following report would be more comprehensive and detailed.

60. He requested further information on the demographic composition of the country, notably the relationship between Muslims and Christians, and asked whether both groups participated in the Government.

61. He emphasized the importance of article 4 of the Convention and regretted the report's failure to provide information on Nigeria's implementation of that article. He asked whether any specific steps had been taken.

62. Similarly, the report gave no details on the application of article 6 of the Convention, which was also of fundamental importance. He asked what action was being taken by the Government to assure the "effective protection and remedies" called for by that article.

63. Mr. ABOUL-NASR said that the Committee had to bear in mind the exceptional situation in Nigeria. The country had been brought to the verge of collapse by civil war and it had required military intervention to restore law and order, unify the nation and prepare for a return to normal conditions. Allowances should therefore be made for the shortcomings of the ninth report (CERD/C/149/Add.25), although it was to be hoped that the following report would be more satisfactory. Furthermore, he reminded members that they were concerned with the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and questions on the Muslim/Christian division of Nigeria were therefore irrelevant. While he was fully aware of the scale of the problems faced by Nigeria, he asked for some indication as to when full civilian government was likely to be restored.

64. Mr. AHMADU observed that the ninth report (CERD/C/149/Add.25) covered the situation in Nigeria up to 1986, whereas most of the Committee's comments and questions related to developments since that date and would consequently need to be answered by the representative of Nigeria or dealt with as soon as possible in the tenth periodic report. The information to be provided would, of course, reflect the considerable progress made, including the adoption and promulgation of the new Constitution.

65. He expressed the fear that the Committee was at times overstepping the bounds of what was required of it under the Convention by delving into general human rights issues, which were dealt with by other bodies. He was also troubled by the constant requests, to developing countries in particular, for demographic data regarding ethnic and religious groups. Like Mr. Aboul-Nasr, he did not think that the establishment of rigid distinctions between such groups was conducive to harmony and racial and religious integration.

66. The reporting of events up to 1986 in the ninth periodic report was to be commended. The record of the Government which had come to power in the latter part of 1985 concerning the implementation of the Convention bore no

comparison to that of the administration it had replaced, and the rule of law was being upheld. The civil war, which in his view had been waged on economic rather than tribal or religious grounds, had ended in 1970; those troubled times were long since over and he did not think that the report should contain any further information in that regard.

67. Mr. SHERIFIS expressed pleasure at the ongoing dialogue between the Committee and the reporting State. He was not in favour of any statement or action that might be conducive to ethnic division or strife, or of going back in history and accentuating former ethnic problems, which he hoped were a thing of the past. However, the Convention was very clear on the right to freedom of movement and residence and the right to own property, and he wished to know whether there were any restrictions of any kind on the application of article 5 (d) (i) and (v) in any of the provinces of Nigeria, and, if so, what reasons could be given. He also wished to know what guarantees there were for the participation of representatives of all groups or tribes in the Federal Government. Finally, with reference to article 3 of the Convention, he commended Nigeria's outstanding record in the struggle against apartheid and in world efforts to combat racial discrimination.

68. Mr. BESHIR concurred with Mr. Ahmadu's comments about creating divisions between religious groups. He himself felt particularly concerned when members of the Committee asked questions about the numbers of Christians and Muslims in a given country, as though those were the only significant divisions in a society. That applied also to questions about the ethnic or tribal breakdown, since words like "ethnicity" or "ethnic groups" could be used in a constructive or a negative way. Nigeria was a composite society, a nation in the making, and attention should be focused, where Nigeria and many other third world countries were concerned, on adopting a constructive approach to the establishment of a democratic society based on the rule of law and respect for basic human rights. That indeed was the underlying philosophy of the Convention. A society should not be considered from the standpoint of values different from those traditionally prevailing in the country concerned.

69. Mrs. SADIQ ALI pointed out that she had merely said that if no data was available on the tribal communities, which did exist in Nigeria, she wished to be informed about the population of the new states currently being created and what they represented.

70. She felt there was no need to be over-sensitive about questions concerning Muslims and Christians. People had been killed and there had been a law-and-order situation in Kaduna state. Moreover, she had done no more than inquire about the implementation of article 5 (d) (viii) of the Convention.

71. The CHAIRMAN, speaking in his personal capacity, said that it was true, as had been pointed out at various times, that members of the Committee sometimes overstepped the bounds of the Convention, which was only natural in view of the structure of the Convention itself. The Convention dealt basically with race and racial discrimination, as defined in article 1, and with the enjoyment of certain rights on the basis of equality before the law, those rights being enumerated in article 5. Committee members might deem it necessary to ascertain whether those rights actually existed in the society concerned before considering whether they were enjoyed on the basis of equality before the law, which explained why their questions sometimes appeared to exceed the strict competence of the Committee and enter spheres covered by the International Covenants on Human Rights.

72. Again, it was helpful for the Committee to be informed of the demographic composition of States, especially in the case of a State which accepted that it was composed of different nationalities, ethnic groups or segments of minority groups. In such cases, the Committee was entitled to ask whether certain action taken or not taken by a majority group was not prompted by racial discrimination, as defined by the Convention.

73. With regard to religious groups in certain countries and the contention by some that religion was not the concern of the Convention or the Committee, situations might arise which might originally have nothing to do with racial discrimination but, with the blurring of ethnic and religious or ideological borderlines, might lead to conflict. It was for the States parties concerned to indicate whether there were such groupings and whether they were significant or relevant to the Convention, and they should not be sensitive about providing such information.

74. There had been much discussion in the Committee over the years about the interpretation of "ethnic" and "tribal" groups. Ethnicity was not necessarily linked to a specific tribe or clan, and it was therefore for the reporting State to explain the functioning of its society. If it did not consider certain groupings to be significant, the Committee would accept its explanations. Commenting on Mrs. Sadiq Ali's request for information on the administrative division of the country should figures on ethnic groups be unavailable, he did not consider such information to be very significant in terms of racial discrimination or race as defined in the Convention. Although it might be of interest for an understanding of the political structure, that might well be deemed to lie outside the Committee's competence.

75. It was the Committee's task to ensure that if a State provided for a right or for the enjoyment of a right, that right was fully and equally enjoyed by all before the law. If, however, no provision was made for the enjoyment of such a right, or restrictions existed that were applicable to all without discrimination and not directed to any particular group, then the matter did not fall within the purview of the Committee. Mr. Sherifis' question about restrictions to certain freedoms should be seen in that context.

76. With reference to Nigeria's ninth report, it could be said that it had been overtaken by events in Nigeria in recent years. The Nigerian authorities had been endeavouring to achieve unity and fashion a society in which there was no discrimination. It was hoped that the radical transformation of the constitutional situation would be completed by 1992. The new Constitution indeed contained many provisions that were quite unique. All that could be done was to request the inclusion of information on the latest developments in the next periodic report.

The meeting rose at 12.50 p.m.

852nd meeting

Tuesday, 22 August 1989
at 3.15 p.m.

Chairman: Mr. LAMPTEY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (*concluded*)

Ninth periodic report of Nigeria (CERD/C/149/Add.25) (*concluded*)

At the invitation of the Chairman, Mr. Azikiwe and Mr. Sanyaolu (Nigeria) took places at the Committee table.

1. Mr. AZIKIWE (Nigeria) began by thanking the members of the Committee for their attention to the ninth periodic report of Nigeria (CERD/C/149/Add.25) and assured them that all their comments would be duly taken into account by the Government, which had been unwavering in its commitment to promoting the cause of human rights since coming to power in 1987.

2. While it was true that Nigeria had recently been through a civil war, the disturbances had broken out as a result of breaches of the law committed by elements external to installed authority and the army, led by the current President of the Federal Republic of Nigeria, had had to intervene to restore order. The present régime, although military, had a particularly human face.

3. As to the composition of the population, steps had been taken to organize a census for 1991, before the return to civilian rule. The authorities had already started issuing nationals with identity cards.

4. It was unwarranted to depict Nigeria as a State torn by religious tensions. While Muslims and Christians were cohabiting, there were at least as many atheists also living in the country, which was a secular State. The 21 States of the Federation had not been constituted on religious lines, and in some States there were equal numbers of Christians, Muslims and atheists. The country had made great progress in that respect, and in any case such tensions as it might have experienced in the past had stemmed from economic rather than religious causes. Admittedly disturbances of religious origin had broken out in the State of Kaduna, but they had been of a very local nature and had not been clashes between Christians and Muslims. The State of Nigeria encouraged its citizens to profess the faith of their choice while taking care to preserve the principle of secularity.

5. As to possible problems concerning nationality, it should be noted that Nigeria did not recognize dual nationality.

6. In reply to questions from a Committee member about the composition of the Armed Forces Ruling Council (AFRC), the speaker stated that, while there was no provision for a mandatory minimum number of Christians or Muslims on the Council, every effort was made to ensure that the 21 States of the country were represented as fairly as possible. The same applied to the National Council of Ministers: provision was made for the representation of all 21 States, but that did not mean that all of them were automatically represented.

7. The Committee could rest assured that any questions not discussed orally would be taken up in Nigeria's next report, in which all the advances of the last two years would be duly recorded.

8. Mr. SANYAOLU (Nigeria), supplementing Mr. Azikiwe's replies, began by confirming that the Federal Government had appointed a committee to revise the 1979 Constitution, taking into account the recommendations of the Political Bureau. The new Constitution, drawn up by the Constituent Assembly, promulgated by the Government in a decree issued in 1989, and due to come into force in 1992 when the country returns to civilian rule, reaffirmed all the fundamental rights and principles laid down in articles 2 and 4 of the 1979 Constitution.

9. When the eighth periodic report of Nigeria (CERD/C/118/Add.14) was being considered, the Committee had recommended that the Government should consider extending to the parties to civil proceedings the free legal aid then available only to defendants in criminal cases who were unable to afford counsel. To that end the Government had made a decree in 1986 amending the law on legal aid so that it could be granted also in civil cases.

10. For the information of those members of the Committee who had wondered about the division of functions and powers between the Armed Forces Ruling Council and the National Council of Ministers, the former was the supreme legislative authority of the country, while the latter was responsible for matters of policy.

11. With regard to freedom of religion, some members of the Committee had wondered how to interpret the word "generally" in the first sentence of paragraph 24 ("Constitutional provisions ... are generally respected throughout the country"). In that context, it should be understood to mean that the provisions were applied without restriction throughout the country. In the next sentence, the reference to religious travel being "in some cases officially supported" should not be taken to imply that in other cases there were restrictions. In reality the Government always permitted such travel, including the pilgrimage to Mecca, but it sometimes helped pilgrims to obtain a visa or organized charter flights.

12. Since the Committee had begun its consideration of the ninth periodic report of Nigeria three years after its presentation, it was beyond question in need of updating. The Government of Nigeria planned to give full particulars of developments over the past three years in the tenth periodic report.

13. Mr. PARTSCH agreed that members of the Committee had been asking questions on the basis of information which was perhaps no longer valid; for that reason some information on recent developments would have been welcome in the Nigerian delegation's oral presentation, particularly with regard to discussions within Government bodies of the measures required by article 4 of the Convention. During consideration of the eighth periodic report, the Committee had learned that the question was to be referred to experts. It would be useful to know what steps had been taken to follow up the Committee's recommendations on the subject.

14. Mr. SANYAOLU (Nigeria) replied that, during the consideration of the eighth periodic report of Nigeria, the Committee had recommended that

article 50 of the Criminal Code should be amended to prescribe explicit sanctions against acts of incitement to racial hatred or discrimination, in accordance with article 4 of the Convention. The Government, for its part, had considered that article 50, which defined seditious intention as "an intention ... to promote feelings of ... hostility between different classes of the population of Nigeria", met the requirements of article 4 since the word "classes" also meant races in that context. 29/ None the less that article would shortly be amended.

15. Mr. PARTSCH expressed the hope that the text of the amendment would appear in the next report.

16. The CHAIRMAN thanked the Nigerian delegation for having kindly continued the dialogue with the Committee, which awaited with interest the tenth periodic report.

17. He announced that the Committee had concluded its consideration of the ninth periodic report of Nigeria (CERD/C/149/Add.25).

Mr. Azikiwe and Mr. Sanyaolu (Nigeria) withdrew.

Sixth, seventh, eighth, ninth and tenth periodic reports of the Libyan Arab Jamahiriya (CERD/C/172/Add.2)

At the invitation of the Chairman, Mr. Omar and Mr. Al-Araby Assakloul (Libyan Arab Jamahiriya) took places at the Committee table.

18. Mr. AL-ARABY ASSAKLOUL (Libyan Arab Jamahiriya), introducing his country's sixth to tenth periodic reports, contained in a single document (CERD/C/172/Add.2), pointed out that that document contained an account of the legislative and other measures taken pursuant to the Convention to combat racial discrimination and guarantee the exercise of equal rights for all without distinction of any kind. The Committee would note that a conference on racial discrimination had been held in Tripoli from 23 to 26 November 1985 under the auspices of the Association of Jurists of the Libyan Arab Jamahiriya, with the co-operation of the African Jurists' Association, as part of the Second Decade to Combat Racism and Racial Discrimination. Furthermore the Libyan Arab Jamahiriya had made a contribution of $10,000 to the Trust Fund for the Programme for the Decade on 26 June 1989. The Libyan authorities had continued to lend their support to the freedom fighters of South Africa and occupied Palestine.

19. Libyan legislation guaranteed all persons equality before the courts. Everyone was free to travel, leave the country and return to it, and the authorities had abolished exit visas. All inhabitants had equal rights to medical care, and children, adolescents and young people of no fixed abode enjoyed equal protection. Their right to education, health and social welfare was also guaranteed. Women enjoyed full political, social and economic rights.

20. The Libyan delegation assured the Committee that it attached particular importance to the noble cause the Committee defended, and would listen carefully to its comments so that they might be taken into account in the next report.

21. The CHAIRMAN welcomed the Libyan Arab Jamahiriya's contribution of $US 10,000 to the Trust Fund for the Programme for the Second Decade for Action to Combat Racism and Racial Discrimination. He took the opportunity to ask the delegation of the Libyan Arab Jamahiriya to intercede with its Government to settle its outstanding contributions to the Committee. The arrears currently stood at $6,376; it was desirable that that sum should be paid as soon as possible.

22. Mr. FOIGHEL, rapporteur appointed for the preliminary examination of the sixth to tenth periodic reports of the Libyan Arab Jamahiriya (CERD/C/172/Add.2), recalled that the Committee had considered the fifth periodic report (CERD/C/20/Add.29) of that country in 1979, 10 years previously. In 1978 the Committee had felt that the fourth periodic report (CERD/C/R.90/Add.18) was very brief and did not meet the requirements of article 9 of the Convention. After examining the fifth report, the Committee had invited the Libyan Arab Jamahiriya to present another report containing further information on matters of direct relevance to its work. The present document was more detailed. The fact that representatives of that State party were present to take part in a dialogue with the Committee was also to be welcomed.

23. However, the new combined report still did not entirely follow the guidelines laid down by the Committee (CERD/C/70/Rev.1), and still did not deal with a number of matters of concern to it. The Committee was insufficiently informed about the actual situation in the Libyan Arab Jamahiriya; it would need some general background, including in particular some population data: number of foreigners of different nationalities, minorities, ethnic groups, etc.

24. In addition it would have been useful if the report had followed the structure of the Convention at the same time as the Committee's guidelines. It should be remembered that those guidelines were intended to facilitate the tasks both of the Committee and of Governments. It was true that the report contained some interesting items of information, but they should have been presented more systematically.

25. The information given in paragraphs 4-7 concerning the equal rights of citizens before the law was satisfactory. However, the second sentence in paragraph 7 was in need of clarification: it stated that no person was prevented from enjoying the right to enter and leave the Libyan Arab Jamahiriya "unless such prevention is necessitated by security reasons based on objective principles in keeping with the requirements of the public interest". He would like to know what those objective principles were.

26. It was regrettable that nothing was said about what the Libyan Arab Jamahiriya was doing to combat *apartheid* pursuant to article 3 of the Convention. Paragraph 3 of the report did deal with the country's support for liberation movements in their struggle against the South African régime, but no information was given concerning commercial or other relations, or official links, between the two countries.

27. With regard to article 4 of the Convention, he asked what victims of racism could do when attacked. The report contained no information on that

subject. More generally, the Libyan Arab Jamahiriya should indicate in its next report what measures it had taken or intended to take pursuant to article 4, subparagraphs (a), (b) and (c), of the Convention.

28. The information provided concerning article 5 seemed satisfactory, but once again it was difficult for the Committee to evaluate the situation in that regard without a better knowledge of the context.

29. The report of the Libyan Arab Jamahiriya did not, therefore, seem to do justice to the country's efforts to combat discrimination, and could be said to raise more questions than it gave answers. Fortunately the Committee had the opportunity for a dialogue with the delegation of that State.

30. The CHAIRMAN observed that no other member of the Committee wished to comment. That meant that the Committee shared the views expressed by Mr. Foighel. As Mr. Foighel had said, the Government of the Libyan Arab Jamahiriya ought in future to follow the Committee's guidelines in presenting its reports; he would ask the Secretariat to send the text of those guidelines to the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations Office at Geneva.

31. As Mr. Foighel had emphasized, the reports presented hitherto by the Libyan Arab Republic did not contain sufficient background information; population data in particular were lacking. As to the application of article 3, it was well known, in particular through the newspapers, that the Libyan Arab Jamahiriya played on exemplary role in the struggle against apartheid but, as Mr. Foighel had pointed out, the report did not do justice to its efforts. All measures taken by the Libyan Arab Jamahiriya to combat apartheid should therefore be described in detail in its next report.

32. As to the application of article 4 of the Convention, the Libyan Arab Jamahiriya should examine its Criminal Code to see whether all its provisions were consistent with that article: if some were not, it would be necessary to indicate what steps were envisaged to make good the discrepancies.

33. As Mr. Foighel had also noted, the report contained fairly detailed information on article 5, concerning the rights which could be exercised on a basis of equality before the law. There again, however, the Committee needed to be better informed as to how those rights were exercised in practice.

34. More specific information was also required regarding article 6. With reference to article 7, the Committee would like to know more about public education against racial discrimination in the Libyan Arab Jamahiriya, and about what was being done to maintain harmony between population groups. In that connection it would be useful to mention in the next report any cases which had been brought before the courts.

35. Mr. OMAR (Libyan Arab Jamahiriya) thanked Mr. Foighel, the rapporteur entrusted with the preliminary examination of the sixth to tenth periodic reports of the Libyan Arab Jamahiriya (CERD/C/172/Add.2), for his valuable comments which, although critical, were objective. He acknowledged that the report was too brief, and that in particular it contained neither the desired information about population nor an adequate account of the efforts made by the Libyan Arab Jamahiriya in the struggle against apartheid. The shortcomings of the report were due to the fact that Libyan Arab Jamahiriya

had been out of touch with the Committee for a long time. That had reduced its capabilities. The Committee could rest assured that the representatives of the Libyan Arab Jamahiriya would pay the closest attention to the question of payment of their country's contributions.

36. Even if the report did not show it, there was no problem of discrimination or *apartheid* in the Libyan Arab Jamahiriya. The reason was simple: the Libyan population was homogeneous, having a single origin and a single religion, namely Islam. It was true that there was a small proportion of Christians, who were respected and held their services in a few churches in Tripoli, Benghazi and certain other towns. There were no minorities in the Libyan Arab Jamahiriya. On the other hand there were foreigners of many nationalities, who had come from America and Europe as well as Africa, and who were making a valuable contribution to the execution of the country's ambitious development plans. Nationals of Arab countries did not require a visa to enter and work in the Libyan Arab Jamahiriya.

37. The Chairman had already mentioned the Libyan Arab Jamahiriya's attitude to South Africa; it had no direct or indirect relations with that country and had closed its airspace to it. Detailed information on that subject would be provided in the next report.

38. The "objective principles" which were mentioned in paragraph 7 of the report, and on which Mr. Foighel had asked for clarification, were monitored by the courts, to which all citizens who considered themselves to be victims of discrimination could apply. Again, detailed information would be provided in the next report.

39. He did not claim to have answered all Mr. Foighel's comments, but wished to assure him that he had taken careful note of them and that the appropriate replies would be given in the next report, if necessary after consultation with the Secretariat. He concluded by thanking the Committee and assuring it that the omissions noted would not recur in future reports.

40. *The CHAIRMAN* felt that, after 10 years of silence, the resumption of dialogue with the Libyan Arab Jamahiriya was something to be appreciated; it was now to be hoped that the dialogue would not be interrupted again. The Chairman thanked the representatives of the Libyan Arab Jamahiriya for their assurance that they would take the necessary steps with a view to payment of that country's arrears of contributions. The Committee would await with interest the next report, and counted on it to provide the information which had been found wanting. The Secretariat would communicate to the Mission of the Libyan Arab Jamahiriya the text of the Committee's guidelines and the summary records of the discussion of that country's report. He announced that the Committee had concluded its consideration of the sixth to tenth periodic reports of the Libyan Arab Jamahiriya (CERD/C/172/Add.2).

Mr. Omar and Mr. Al-Araby Assakloul (Libyan Arab Jamahiriya) withdrew.

The meeting rose at 4.25 p.m.

853rd meeting

Wednesday, 23 August 1989
at 11.25 a.m.

Chairman: Mr. LAMPTEY

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-THIRD SESSION:

(a) ANNUAL REPORT SUBMITTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION;

(b) REPORTING OBLIGATIONS OF STATES PARTIES TO UNITED NATIONS CONVENTIONS ON HUMAN RIGHTS (GENERAL ASSEMBLY RESOLUTION 42/105) (agenda item 2) (continued) */

1. The CHAIRMAN recalled that two working groups had been convened to discuss agenda item 2 (a) and 2 (b) respectively, and requested Mr. Sherifis, as convener of the working group on item 2 (b), to report on that group's conclusions.

2. Mr. SHERIFIS introduced the text prepared by the working group on item 2 (b) which had been circulated to Committee members and read as follows:

> "DRAFT VIEWS OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION ON THE CONCLUSIONS AND RECOMMENDATIONS OF THE MEETING OF CHAIRPERSONS OF HUMAN RIGHTS TREATY BODIES
>
> "(a) Consolidation of reporting guidelines
>
> "The Committee endorses the idea of the preparation of consolidated general guidelines covering the initial part of States parties' reports which could be made available to each of the treaty bodies whenever that body considers a report from its States parties.
>
> "The Committee finds that the proposals contained in paragraph 21 of the report of the Secretary-General (A/40/600) meet its requirements under the International Convention on the Elimination of All Forms of Racial Discrimination in respect of the consolidation of guidelines relating to Part I of the reports of States parties.
>
> "In this connection the Committee considers that the information reflected in subparagraphs (a), (b) and (c) of the Secretary-General's proposal is of direct relevance to the Committee on the Elimination of Racial Discrimination and would satisfy its requirements under the Convention.
>
> "The Committee is also of the opinion that the information requested in subparagraph (d) of paragraph 21 would be of interest to its work under the Convention, such as unemployment and literacy rates.

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*/ Resumed from the 849th meeting.

"(b) Reporting obligations (overdue reports)

"In connection with the general problem of overdue reports affecting the implementation of several human rights treaties, in particular the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee endorses the suggestion that technical assistance and advisory services should be provided on a regular basis by the Secretary-General to assist States parties in fulfilling their reporting obligations. The Committee believes that the emphasis in providing such assistance should be placed on regional and subregional training courses in the preparation and submission of reports by States parties.

"(c) Question of periodicity of reporting

"In connection with the recommendation in paragraph 90 of the report of the meeting of Chairpersons, the Committee wishes to draw attention to the fact that it has already endorsed the proposal relating to the periodicity of reporting made at the eleventh meeting of States parties to the Convention, to the effect that as a general practice, after the submission of initial comprehensive reports to the Committee, States parties would submit further comprehensive reports on every second occasion thereafter, when reports were due, i.e. every four years, and that they would submit brief updating reports on each intervening occasion when reports were due under the Convention (see: A/43/18, para. 24 (c)).

"(d) Use of rapporteurs or co-ordinators

"In connection with the recommendation for the use of rapporteurs and co-ordinators to expedite timely and effective consideration of periodic reports, the Committee draws attention to the fact that in accordance with a decision taken at its thirty-sixth session, it began the practice, as from its thirty-seventh session, of using country rapporteurs to prepare analyses of State party reports. The Committee believes that the system of special rapporteurs has contributed to the reduction of time for the consideration of each State report, thus meeting the concern which led to the recommendation contained in paragraph 92 of the report of Chairpersons."

3. The working group, composed of Mr. Ahmadu, Mr. Reshetov, Mr. Song Shuhua and himself, had had before it the report of the meeting of Chairpersons of human rights treaty bodies convened in October 1988 (HRI/MC/1988/1), and had also considered paragraph 21 of the report of the Secretary-General (A/40/600) containing recommendations on the specific question of consolidating the guidelines of the supervisory bodies entrusted with consideration of the reports of States parties on the implementation of United Nations conventions on human rights. The working group considered that the proposals put forward by the Secretary-General in the latter document were highly commendable and adequately met the Committee's requirements under the Convention. Various proposals had been put forward by other human rights supervisory treaty bodies concerning specific information to be requested of States parties under the consolidated guidelines, but the working group considered that the proposals in paragraph 21, especially subparagraphs (a) on land and people, (b) on general political structure and (c) on the general legal framework within

which human rights are protected were of direct relevance to the Convention and would suffice for the Committee's requirements. The working group was also of the opinion that the provision of information on economic, social and cultural characteristics referred to in paragraph 21 (d) would be helpful to the Committee's work, but was not absolutely necessary and need not, therefore, be requested as a matter of course.

4. Referring to section (b) of the draft text, concerning overdue reports, he said that the Committee had repeatedly called for the regular provision of technical assistance and advisory services to assist States parties in fulfilling their reporting obligations, and might wish to reiterate the need for emphasis to be placed on regional and subregional training courses for that purpose.

5. Paragraph 90 of the report of the meeting of Chairpersons stated that each treaty body should continue to review the possibility of revising its requirements as to the periodicity of reporting, taking into account the burden on States and the need for an effective reporting procedure. He drew the Committee's attention to paragraph (c) of the working group's draft text, adding that, since the Committee had already acted on that proposal, the working group considered that no further action was required.

6. Similarly, the Committee had already taken action on the recommendation of the meeting of Chairpersons in paragraph 91 concerning the use of individual rapporteurs in order to expedite the timely and effective consideration of periodic reports. Experience at the Committee's current session had prompted the working group to suggest that the system of rapporteurs should be continued, since, among other things, it had helped to reduce the time taken for the consideration of each State report, thereby also meeting the concern which had led to the recommendation contained in paragraph 92 of the report of the meeting of Chairpersons.

7. In conclusion, the working group could accept the proposals in documents HRI/MC/1988/1 and A/40/600, at least where they were relevant to the Committee's own requirements under the Convention. It had not considered it appropriate to deal with certain aspects covered by the working group on item 2 (a) but suggested that the Committee, after hearing the report of the other working group, might wish to adopt an umbrella paragraph covering the work of both groups.

8. Mr. ABOUL-NASR, commenting on the draft text of the working group on item 2 (b), said that the first paragraph of section (a) was not very clear to anyone who had not participated in the work of that group. He also thought that the term "advisory services" in section (b) should be expanded to explain who was providing the advisory services and in which field.

9. Section (c) raised a problem of substance, because not all the United Nations organs receiving reports had the same reporting system. Some needed a continuous flow of information, whereas others, like the Committee, could scarcely expect a reporting State, once it had submitted a comprehensive initial report, to continue to submit full reports every two or four years if the situation in the State concerned had not changed in the meantime. It would be preferable to state that once an initial comprehensive report had been submitted, the Committee should receive further such reports only when the situation in the State concerned so warranted or a request had been made

for further information, but it should not necessarily be specified that a report was required every two or four years. His was not a very strong objection, and he would be willing to bow to the wishes of other Committee members; moreover, in practice, States parties that had already submitted full reports would no doubt continue merely to update them as necessary.

10. Regarding the use of country rapporteurs, since the rapporteur system to assist the Committee in its work was still at the experimental stage, it could not categorically be stated as yet that the system saved time, and he would accordingly suggest replacing the words "has considerably contributed to the reduction of time" by "can contribute to the reduction of time".

11. The CHAIRMAN said, with regard to the form of the text, that it should be borne in mind that the text was based on certain documents and in its final form would be preceded by an introductory statement which would clarify the initial points raised by Mr. Aboul-Nasr.

12. The periodicity of reporting was based on a decision that had been adopted by the Committee after lengthy discussions, and that decision had itself been based on the reporting obligation required by article 9 of the Convention. Moreover, even if a State had submitted an initial comprehensive report on the action taken to implement the Convention, it was necessary for the Committee to review the overall situation periodically.

13. Mr. PARTSCH said that the first two paragraphs of section (*a*) of the working group's text in fact dealt with the same subject and should be combined into a single paragraph.

14. It seemed to him that, in addition to saving time, the rapporteur system made for a more exhaustive analysis of reports. It should, therefore, be stated that the system had contributed to a concentration of the examination of each State report, so that the Committee worked not only faster but in greater depth.

15. The CHAIRMAN asked whether Mr. Partsch meant to imply that there had not previously been an in-depth consideration of reports.

16. Mr. PARTSCH said that he had not meant to criticize the former system. However, under that system, all members of the Committee had felt obliged to make long statements merely to express their appreciation of the presence of States' representatives and the submission of reports. Under the rapporteur system, they could be much briefer or remain silent. To avoid misunderstanding, he suggested that the phrase "a further concentration" might be used.

17. Mr. FERRERO COSTA said that the Committee should make it quite clear that the use of rapporteurs contributed to an efficient use of time and an in-depth analysis of reports. In reply to Mr. Aboul-Nasr, he said that the Committee had agreed at the previous session to use the system on an experimental basis. The experimental phase had been completed and the system had proved to be a good one; consequently, the Committee should adopt the use of rapporteurs as its normal working method.

18. He had seen no reference to the question of late reports containing outdated information, and therefore proposed that the Committee should once

again request States parties to submit full reports containing all previous overdue reports in a single document, so that the Committee's analysis could be up to date.

19. Mr. AHMADU agreed with the working group that the rapporteur system had met the concern that had led to the recommendation in paragraph 92 of the report of the meeting of Chairpersons. He cited the consideration of the reports of Nigeria and the Libyan Arab Jamahiriya as examples of the way time had been saved by the use of rapporteurs at the current session. A time-limit, therefore, was not required for speakers in the Committee.

20. He proposed, however, that the words "has considerably contributed" in the second sentence of section (d) should be amended to read "might contribute", since the system was still in an experimental stage and required further consideration.

21. Mr. SHAHI said that with regard to the periodicity of reporting, a perfect system could not be prescribed; it depended on the flexibility of the Committee's approach to the question. Where the rapporteur system was concerned, the Committee should not hesitate to point out that the system had not only saved time but had led to a fuller dialogue with States parties. In the past, after questions had been put and the representative of the State party had responded, the proceedings had been concluded for that particular report. At the current session, even after the answers of the State party representative, further questions had been put and the dialogue had thus been deepened.

22. Mr. GARVALOV said that the reference in section (a) of the working group's text to the proposals in subparagraphs (a) to (c) of paragraph 21 in the Secretary-General's report (A/40/600) meant that the Committee would have to include those paragraphs in its general guidelines to States parties and he doubted the relevance of subparagraph (a) on land and people and subparagraph (b) on general political structure.

23. Although the rapporteur system had produced a change in the effectiveness of the Committee's work, the system was still experimental. If, however, it was borne in mind that the appointment of a country rapporteur did not preclude other Committee members from putting specific questions of interest to them, he had no difficulty in accepting the wording of section (d) of the text.

24. Mr. YUTZIS fully supported the need to stress the periodicity of reports; leaving the decision to States parties themselves would jeopardize the only control mechanism the Committee possessed. With regard to the use of rapporteurs, a fuller evaluation of the system was needed and could be undertaken at the current or the next session. Such an evaluation might be useful in connection with other human rights instruments.

25. Mr. SHERIFIS, speaking as convenor of the working group, said that the idea of combining the first two paragraphs of section (a) was acceptable. With regard to data relevant to demographic characteristics mentioned in subparagraph (a) of paragraph 21 of the Secretary-General's report (A/40/600), reference to such data was already made in part I, paragraph (c), of the revised general guidelines (CERD/C/70/Rev.1). The working group had intended to go no farther than that.

26. With regard to periodicity, the working group had merely recalled the decision which the Committee had taken at its thirty-sixth session.

27. The working group had thought that the system of rapporteurs had proved effective and should remain in use without being made permanent for the time being. There was general agreement that the system had saved time, but perhaps the working group had gone too far in using the word "considerably" in the second sentence of section (d) and it could be deleted. He also agreed that the use of the word "concentration" by itself would raise questions, and suggested that that sentence should be amended to read: "The Committee believes that the system of special rapporteurs has contributed to a further concentration and a reduction of time for the consideration of each State report".

28. The CHAIRMAN supported Mr. Sherifis' comments with regard to subparagraphs (a) to (c) of paragraph 21 of the Secretary-General's report (A/40/600). Not only had the Committee taken decisions long ago in regard to those subparagraphs but its whole practice was reflected in them.

29. In view of the general agreement on the need to merge the first two paragraphs of section (a), he suggested that the new combined paragraph should read "The Committee finds that the proposals contained in paragraph 21 of the report of the Secretary-General (A/40/600) meet its requirements under the International Convention on the Elimination of All Forms of Racial Discrimination in respect of the consolidation of guidelines relating to Part I of the reports of States parties, which could be made available to each of the treaty bodies whenever that body considers a report from its States parties."

30. Mr. GARVALOV reiterated his view that subparagraphs (a) and (b) of paragraph 21 of the Secretary-General's report (A/40/600) were not relevant. If the Committee endorsed those subparagraphs, it would be giving further guidelines to the States parties. In particular, if it endorsed subparagraph (b), it would be overstepping the fine line that separated the Convention from the International Covenants on Human Rights.

31. The CHAIRMAN said that the guidelines were supposed to be permanent requirements to be met by States parties in preparing their reports. They also reflected another idea in the report of the meeting of Chairpersons concerning the preparation of a permanent manual. In his opinion, Committee members should be conversant with the political, legislative, geographic and other characteristics of a country before they began their formal consideration of that country's periodic report. The purpose of the guidelines was to ensure that members had background information on a particular country before they dealt with its report.

32. Mr. AHMADU thought that the sentence suggested by the Chairman for the first part of section (a) of the working group's text contained two ideas which should preferably be expressed in two separate sentences. He therefore proposed that the first sentence should end with the words "States parties" and that a new second sentence should read: "The Committee also endorsed the idea that such consolidated general guidelines could be made available to each of the treaty bodies whenever that body considered a report from its States parties".

33. The CHAIRMAN said that if he heard no objection, he would take it that the Committee agreed to that proposal.

It was so decided.

Sections (a), (b) and (c) of the working group's text, as amended, were approved.

34. THE CHAIRMAN, referring to section (d), said that in the second sentence, the word "special", which had a particular connotation in the United Nations system, should be deleted, as well as the word "considerably". He suggested that the sentence should be amended to read: "The Committee believes that the system of rapporteurs has contributed to the reduction of time for the consideration of each State report and deepened the dialogue with State party representatives, thus meeting the concern which led to the recommendation contained in paragraph 92 of the report of Chairpersons".

35. Mr. SHERIFIS said that he had some misgivings about the Chairman's suggestion, since paragraph 92 of the report of the meeting of Chairpersons was concerned with the question of saving time and not with that of deepening the dialogue.

36. The CHAIRMAN suggested that the words "thus meeting the concern which led to the recommendation contained in paragraph 92 of the report of Chairpersons" should be deleted.

It was so decided.

37. Mr. GARVALOV said that in order to avoid any misunderstanding and to allay any fears, he wished to propose the replacement, in the first sentence, of the words "accordance with a" by the words "implementation of its".

38. Mr. SHERIFIS supported that proposal.

39. The CHAIRMAN said that the first sentence of paragraph (d) would then read: "In connection with the recommendation for the use of rapporteurs and co-ordinators to expedite timely and effective consideration of periodic reports, the Committee draws attention to the fact that in implementation of its decision taken at its thirty-sixth session, it began the practice, as from its thirty-seventh session, of using country rapporteurs to prepare analyses of State party reports." If there was no objection, he would take it that section (d), as amended, was approved.

It was so decided.

40. THE CHAIRMAN invited Mr. Aboul-Nasr as convenor of the working group on agenda item 2 (a), to introduce the text of the draft letter to States parties in arrears and the text of the Committee's draft decision, recommending a draft resolution to the General Assembly. Both texts had been circulated to members.

41. Mr. ABOUL-NASR said that he had held two meetings with the other members of the working group, Mr. Garvalov, Mr. Partsch and Mr. Yutzis. They had prepared a draft decision which the Committee should consider paragraph by paragraph. However, he suggested that the Committee should not enter into a

detailed discussion of the draft letter to States parties in arrears. Since that letter was to be sent by the Chairman, he alone should be responsible for the final text and members should convey any comments to him.

42. The CHAIRMAN said he accepted responsibility for the final drafting of the letter and requested members to inform him of their proposals as to its contents.

43. He invited comments on the preamble of the draft decision.

44. Mr. FERRERO COSTA suggested that the words "*Expressing the hope*" in the third preambular paragraph should be replaced by a more emphatic phrase.

45. Mr. ABOUL-NASR suggested that the word "*Convinced*" should be used.

It was so decided.

The preambular paragraphs of the draft decision, as amended, were adopted.

46. The CHAIRMAN said that the Secretariat had suggested the addition of the word "again" after "*Recommends*" in the operative paragraph of the draft decision, to underline the fact that the draft resolution had already been recommended to the General Assembly in 1988.

That suggestion was adopted.

The operative part of the draft decision, containing the draft resolution recommended to the General Assembly for adoption, as amended, was adopted.

The draft decision as a whole, as amended, was adopted [decision I (XXXVII)].

47. In reply to a suggestion by Mr. FERRERO COSTA, The CHAIRMAN said that, in his view, the twentieth anniversary of the Convention and the responsibilities of States parties and the United Nations for its implementation were unrelated issues which should not be linked. The Committee would discuss the question of how to mark the Convention's twentieth anniversary at a later stage of the session.

48. Mr. SHERIFIS agreed with the Chairman. He fully supported the draft decision but, being familiar with the work of the Third Committee of the General Assembly, he was aware of the importance of drawing the draft resolution recommended to the General Assembly for its approval to the attention of members of that Committee, particularly as the text submitted in 1988 had produced no response whatsoever. Clearly, it was not enough to include the decision in the Committee's report to the General Assembly and he called on members to consider other methods of calling attention to their concerns.

The meeting rose at 1.05 p.m.

854th meeting (first part) Wednesday, 23 August 1989
at 3.30 p.m.

Chairman: Mr. LAMPTEY

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-THIRD SESSION:

(a) ANNUAL REPORT SUBMITTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION;

(b) REPORTING OBLIGATIONS OF STATES PARTIES TO THE UNITED NATIONS CONVENTIONS ON HUMAN RIGHTS (GENERAL ASSEMBLY RESOLUTION 42/105) (agenda item 2) (concluded)

1. Mrs. SADIQ ALI, recalling that, at the 853rd meeting, Mr. Sherifis had asked how the attention of the members of the United Nations General Assembly was to be drawn to the Committee's recommendation that its work should be financed on the basis of new modalities, said she thought that it was primarily the expert members of the Committee who should first inform the delegations of their respective countries.

2. Mr. ABOUL-NASR said that the Committee should first adopt the final text of the decision it proposed to take on the financing of its work and only then discuss ways of defending it before the General Assembly.

3. Mr. YUTZIS said that a distinction should be drawn between two equally important issues. First, the Committee's twentieth anniversary had to be commemorated and that meant that consideration should be given to a strategy that would serve the Committee better still in its future work; and secondly, a way had to be found to ensure the financing of its work on a more regular basis. In that connection, he believed that it was not enough to send out reminders and that, for practical reasons, consideration must be given to a strategy combining various approaches. He would come back to that question at a later stage.

4. Mr. AHMADU said he knew it for a fact that most of the human rights treaty bodies would like their work to be financed from the United Nations regular budget until a permanent solution had been found to their financial difficulties. In its recommendation concerning the financing of its work, the Committee should therefore take note of the recommendation along those lines made by the meeting of Chairpersons of human rights treaty bodies A/44/98, para. 83) and endorse it before formulating its own recommendation in accordance with the operative part of the working group's text, which had been considered at the 853rd meeting.

5. Mr. SHAHI said that he had reservations with regard to the recommendation the Committee intended to submit to the General Assembly because he very much doubted whether it would serve any purpose. The Committee should bear in mind that, in the General Assembly, the countries of Western Europe and the United States were, on principle, strongly opposed to the idea that bodies generally supported by voluntary contributions should be financed from the United Nations regular budget, even on an exceptional basis. However, as the Committee had reached a consensus on the recommendation drafted by its working group, he would not oppose it. He nevertheless feared that, in the General Assembly, the draft resolution would run into the same opposition that

it had already met. He could probably count on the support of the delegation of Pakistan; and the experts of the Committee who were from European countries might be able to mitigate the opposition of their countries' delegations. Without such support, the Committee's draft resolution would be ignored.

6. No matter what decision it took, the Committee should draw attention at the beginning of its report to the financial difficulties hampering its operation. It must stress the fact that it needed to meet regularly twice a year if it was to fulfil its obligations properly.

7. Mr. GARVALOV recalled that, in the Third Committee, the main sponsors who submitted the draft resolution on the work of the Committee considered it very important that it should be adopted without a vote or in other words, by consensus. If that was the case again, the proposal being considered by the Committee stood virtually no chance of being adopted. Of course, the delegations of Bulgaria, Cyprus, Egypt, France, the Federal Republic of Germany, India, Pakistan, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and Yugoslavia could probably be influenced by the experts of those nationalities who were on the Committee, but the members of the Committee would still have to insist that their countries' delegations should forego their usual request that the decision should be adopted by consensus.

8. Mr. PARTSCH drew Mr. Shahi's attention to the fact that the Western countries had absolutely no objection in principle to the financing modalities that the Committee was proposing for adoption. It was in fact the Netherlands which had taken the initiative in drafting a recommendation to that effect. 30/

9. The CHAIRMAN, speaking as a member of the Committee, said that he agreed with Mr. Partsch. The Western countries were far from unanimous on that issue, although two of them, admittedly among the most powerful, might be tempted to oppose the recommended financing formula. At any rate, it was bad policy to go into battle accepting defeat. All the major General Assembly resolutions had been adopted as a result of fairly tough battles and often by a very narrow majority. He therefore supported the suggestion made by Mr. Ahmadu and proposed that the following last preambular paragraph should be added to the draft resolution recommended by the Committee:

> "Taking note of the recommendation made by the second meeting of Chairpersons of human rights treaty bodies that 'the General Assembly, in carrying out its responsibility relating to the proper functioning of the human rights treaty bodies established to monitor the implementation of instruments adopted by the Assembly itself, and as a matter of the highest priority, should ensure the financing of each of the committees from the United Nations regular budget or make other financial arrangements that may be necessary to enable each of the committees to operate effectively' (A/44/98, paragraph 83)".

In the operative part which immediately followed, the Committee should then formulate its own proposal to ensure its financing from the United Nations regular budget on a temporary basis until such time as a permanent solution to the problem could be found.

10. Mr. YUTZIS pointed out that the Committee should also take account of the inertia factor in the Third Committee, where some lobbies worked to prevent draft decisions from being put to the vote and systematically called for consensus. In order to overcome that obstacle, however, the members of the Committee could also take action on several fronts. They too could engage in lobbying in the halls and establish more personal contacts; they could contact non-governmental organizations and request their support, which, in the circumstances, would carry considerable weight. It would also be helpful if the members of the Committee explained the Committee's problems in various United Nations bodies and, contrary to their usual practice, exerted political influence; the press must also be enlisted - for it was not used enough - specifically to publish scientific articles on racial discrimination and to publicize the situation of the Committee and the Convention; consideration should be given to the possibility of holding a press conference in the United Nations building itself; and in the Third Committee, at any rate, the delegations of the countries of which the Committee members were nationals should be lobbied systematically. Those were all specific suggestions that should not be difficult to put into practice.

11. Mr. SHAHI repeated his warning that the Committee had already been defeated once on the very same issue. It should therefore not adopt the same tactic. In any event, the Committee would have to enlist a certain critical mass of support if the opposition, which would be strong, was not to win once again.

12. Mr. SHERIFIS supported Mr. Ahmadu's proposal that the Committee should endorse the recommendation made by the Chairpersons of human rights treaty bodies. The idea of requesting the members of the Committee to inform their respective Governments of the Committee's situation so that they might issue instructions to their delegations in the Third Committee seemed obvious; if a consensus could not be reached, there was still a chance that a majority might be in favour of the draft resolution. The idea of a press conference also seemed worthwhile. In fact, he had always considered that the Committee should give more publicity to its principles, objectives and work. As Mr. Yutzis had suggested, it could use such an opportunity to draw attention to its financial difficulties.

13. Mr. SHAHI said he found that the draft resolution lacked flexibility because the only option it mentioned was financing from the United Nations regular budget, whereas the Chairpersons of human rights treaty bodies had proposed in their recommendation that consideration should also be given to "any other financial arrangements that may be necessary".

14. The CHAIRMAN said that the draft resolution under consideration had already been submitted as it stood to the forty-third session of the General Assembly. The fact that it had been rejected was no reason for changing its wording; that would be a step backwards. The text had been drafted by the working group on the basis of all points of view and the only proposed change was that reference should be made at the end of the preamble to the meeting of Chairpersons of human rights treaty bodies. That reference did not imply that the operative part of the draft resolution applied to the other committees; the underlying justification was that the Committee on the Elimination of Racial Discrimination itself was a human rights treaty body.

15. If he heard no objection, he would take it that the Committee approved the draft resolution to be submitted to the General Assembly.

It was so decided.

16. Mr. YUTZIS said that the Committee had to do everything it could to strengthen its case. The draft resolution just adopted and the Chairman's letter to States parties were necessary but not sufficient conditions for the General Assembly to comply with the Committee's request. He still believed that it would be useful to organize a press conference during the current session, with the participation of all United Nations human rights bodies and, possibly, non-governmental organizations in order to present the work of the Committee and take the opportunity to mention its problems. Without going into the financial situation proper, attention could be focused on the contradiction between the persistence of hotbeds of racism in the world and recognition of the importance of the question, on the one hand, and the problems encountered by the Committee in carrying out the task entrusted to it, on the other. Depending on the way the situation was presented, the information was likely to be of interest to the press.

17. It would also be useful to set up a small working group to define a strategy to ensure that the draft resolution stood the best possible chance of being adopted by the General Assembly.

18. The CHAIRMAN said that the approach to be followed to ensure the adoption of the proposed draft resolution should be discussed informally by the members of the Committee, who no doubt had ideas on that subject.

19. With regard to the idea of a press conference, experience had shown that, although such an event might well arouse the interest of the non-governmental organizations if it were held in New York, the situation in Geneva was quite different. Regrettably, it had to be recognized that, in the eyes of the press, the Committee's activities, unlike the situation in a particular country, for example, would not provide the subject-matter for a newspaper article. He was, of course, not opposed to the idea of calling a press conference, but he had serious doubts about whether it would serve any purpose.

20. Lastly, he invited the members of the Committee to think about a way of commemorating the twentieth anniversary of the establishment of the Committee, a subject to which the Committee should devote a meeting.

21. Mr. FERRERO COSTA said he was convinced that the suggestions made by Mr. Yutzis had been prompted by the good intention of giving political resonance to the Committee's problems, but he did not think that they were all acceptable. The idea of spending one meeting during the following week on a discussion of what could be done to celebrate the Committee's twentieth anniversary was acceptable. That of setting up a small working group to consider the best way of ensuring that the Third Committee adopted the draft resolution just approved was also interesting; the working group could look into various proposals and work out a possible strategy. However, the proposal to organize a press conference to present the Committee's financial problems was questionable and probably went beyond the Committee's terms of reference, but it could perhaps be considered in connection with the preparations for the celebration of the Committee's twentieth anniversary; one way of commemorating that anniversary might just be to hold a press conference.

22. Mr. ABOUL-NASR said that, although he fully respected Mr. Yutzis' ideas and dedication, he could not but oppose his suggestions for the reasons he had already stated on the previous day during the discussions in the informal working group set up to prepare the draft resolution on the Committee's financial difficulties. In short, he also thought that it would be inappropriate to complain about the Committee's financial difficulties at a press conference. The idea of a working group on the strategy to be followed in order to ensure that the draft resolution would be adopted by the Third Committee was not appropriate either. Any discussion of that kind should be held in private consultations; it was out of place in a plenary meeting. He nevertheless agreed that the ideas put forward by Mr. Yutzis could be adapted.

23. The CHAIRMAN said that he had already proposed that consideration should be given to ways of celebrating the Committee's twentieth anniversary. He had also stressed that discussions on the strategy to be followed in the Third Committee must continue to be informal and not reflected in a summary record. He requested Mr. Yutzis to contact the Director of the Information Service to find out how a press conference could be organized. She had attended the meeting of Chairpersons of human rights treaty bodies; she was familiar with the ideas and solutions suggested at that meeting; and she was therefore in a position to understand the Committee's problems. Publicity had always been a matter of concern to the Committee, since racism could not be combated without publicity.

The public meeting rose at 4.50 p.m.

855th meeting

Friday, 25 August 1989
at 10.40 a.m.

Chairman: Mr. LAMPTEY

PRESS CONFERENCE TO BE HELD BY THE COMMITTEE

1. The CHAIRMAN reminded members that they had requested Mr. Banton and Mr. Yutzis to consult the Information Service on the question of holding a press conference. He informed them that Mrs. Gastaut, Director of the Information Service, had suggested Monday, 28 August, as a suitable time for such a conference. She had recommended that the press conference should be attended by a maximum of four representatives of the Committee on the Elimination of Racial Discrimination, with six representatives of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to give the Committee their support. He invited members to comment on the proposal and to nominate the Committee's representatives.

2. Mr. ABOUL-NASR said that he supported the idea of holding a press conference. He suggested that the Chairman should choose the most suitable time for the conference and, in view of his extensive knowledge of the Committee's work and problems, should certainly be among its representatives. However, he had grave doubts about the supportive presence of six members of the Sub-Commission, an arrangement which he did not believe to be usual at such conferences. The Chairman was fully qualified to speak on behalf of the Committee and he (Mr. Aboul-Nasr) did not see the need for a total of 10 representatives when, in all likelihood, there would be less than 10 journalists.

3. Mr. FERRERO COSTA said that he too fully supported the idea of holding a press conference and believed that the Chairman should choose the appropriate time and select the representatives who would attend. Personally, he proposed the Chairman, Mr. Yutzis, Mr. Banton and one other Committee member, thus ensuring equitable geographical distribution. However, he did not share Mr. Aboul-Nasr's opposition to the presence of six members of the Sub-Commission at the press conference. Their attendance had been recommended by the Director of the Information Service, who had considerable experience in the organization of press conferences and, in his opinion, the Committee should defer to her suggestion. He reminded members that it was not proposed to hold a joint press conference and Sub-Commission representatives would be present merely to show their support for the Committee. Their presence might encourage a greater number of journalists to attend the press conference, thereby enhancing its political impact.

4. Mr. PARTSCH said that he endorsed the comments made by Mr. Aboul-Nasr.

5. Mr. RESHETOV emphasized the importance of holding a press conference. In his view, it represented one of the first steps towards ending the Committee's isolation and making the public aware of its work. Many other human rights bodies held such conferences but he reminded members that representatives were never invited to attend, even if racial problems were under discussion. The press conference should be used to draw the attention of the media and the general public to the Committee's own work and not that of any other bodies. If representatives of the Sub-Commission attended the conference, there was a risk that journalists would put questions to those representatives and, as the

Committee was aware, such questions were likely to be highly politicized and controversial. He was therefore opposed to the presence of Sub-Commission representatives.

6. While he appreciated that it was the ultimate responsibility of the Chairman to select the Committee's representatives at the conference, he wished to propose that it should be represented by its elected bureau, i.e. the Chairman, three vice-Chairmen and Rapporteur. The Chairman, who had long experience of the Committee and the United Nations system, was in an excellent position to decide what to say at the conference and how to answer journalists' questions. However, members should inform the Chairman of any particular issues which they wished to see raised and the Chairman should take account of their comments.

7. Mr. YUTZIS said that he had previously proposed the holding of a press conference as one of six essential measures to overcome the Committee's isolation and he was fully aware of its importance. Other human rights bodies were extremely concerned about the fate of the Committee and the International Convention on the Elimination of All Forms of Racial Discrimination and, in his opinion, the presence of some members of the Sub-Commission, in their personal capacity, would mobilize political support for the Committee and increase the impact of the press conference. He reminded members that Mr. Eide had been appointed by the Sub-Commission to deal with the issue of racial discrimination and had recently submitted an 86-page report, 31/ in which he had made specific reference to the Committee's work. He did not see what possible harm could result from the presence of such a person, who was directly involved with the topic covered by the Committee and the International Convention on the Elimination of All Forms of Racial Discrimination.

8. The CHAIRMAN said that he appreciated Mr. Yutzis' viewpoint and was sure that all members would agree that, in theory, no harm could be caused by the attendance of members of the Sub-Commission at the press conference. However, serious reservations had been expressed with regard to the involvement of representatives of other bodies in a conference on the work of the Committee. In particular, he considered that Mr. Reshetov had made a valid point in saying that if recognized members of the Sub-Commission were present, journalists would be inclined to ask similar questions to those which had provoked serious controversy within the Sub-Commission the previous week and the media would focus on those questions. It was clear that the Committee had not reached a consensus on the issue and he therefore suggested that the idea of Sub-Commission representatives attending the press conference should be dropped.

It was so agreed.

9. After an exchange of views in which Mr. PARTSCH, Mr ABOUL-NASR, Mr. RESHETOV and the CHAIRMAN took part, the CHAIRMAN suggested that the press conference should be held on Monday, 28 August, at 12.30 p.m. and that the Committee should be represented by its bureau, i.e. Mr. Yutzis, Mr. Garvalov, Mr. Partsch, Mrs. Sadiq Ali and himself.

It was so agreed.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 7)

Proposed revision of the study entitled Committee on the Elimination of Racial Discrimination and the Progress Made towards the Achievement of the Objectives of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/1) 32/

10. The CHAIRMAN reminded the Committee that at its thirty-sixth session, 33/ it had requested Mr. Banton and Mr. Yutzis to prepare proposals for revising and updating its study entitled Committee on the Elimination of Racial Discrimination and the Progress Made towards the Achievement of the Objectives of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/1), initially prepared on the occasion of the World Conference for Action to Combat Racism and Racial Discrimination in 1978. He invited Mr. Banton to introduce the proposals.

11. Mr. BANTON said he wished to thank Mr. Partsch for the important contribution he had made to the proposals. Co-operation between himself and Mr. Yutzis had been more difficult than anticipated owing to communication problems between Argentina and the United Kingdom. He had prepared the proposals now before the Committee in time for the Committee's cancelled March session and they had then been sent to Mr. Yutzis, who had expressed satisfaction with them. While he (Mr. Banton) believed that there were grounds for further deletions from the study as some matters now appeared less important than in 1978, he had endeavoured to minimize the number of amendments. Certain passages could easily be updated by the Secretariat and he suggested that the Committee should authorize the Chairman to check revised Secretariat drafts.

12. The CHAIRMAN proposed that the Committee should consider the proposed amendments to the study paragraph by paragraph.

Paragraph 2

13. Mr. BANTON proposed that the last two sentences, reading: "The 'fundamental obligations' of States parties are laid down in article 2. The remaining articles specify the anti-discrimination obligations of the contracting States.", should be replaced by: "The obligations of States parties are laid down in articles 2 to 7.". Although the amendment was not an essential one, the emphasis in the original text on "fundamental obligations in article 2" implied a downgrading of the other articles.

14. Mr. SHERIFIS supported that amendment.

15. Mr. ABOUL-NASR said that he preferred to keep the text as it was, since States parties had obligations under other articles in addition to articles 2 to 7.

16. Mr. BANTON said that he would not object to leaving the text unchanged if it meant that agreement could be reached rapidly.

17. Mr. SHERIFIS said that both Mr. Banton and Mr. Aboul-Nasr had made valid points and that, rather than taking a decision in haste, a formulation should be found that took into account both viewpoints.

18. Mr. FERRERO COSTA said that each proposal had to be analysed in the context of the whole document. The Convention was divided into parts I, II and III, and paragraph 2 of the study referred to part I of the Convention, covering only articles 1 to 7. Mr. Banton's proposed amendment should therefore be approved.

19. Mr. ABOUL-NASR said that, while it was true that the Convention was divided into three parts, the matter under consideration was that of States parties' obligations, and other important obligations were surely contained in other articles, such as article 9. However, he did not think that the matter warranted a lengthy discussion, and would prefer the text to remain unchanged.

20. Mr. SHERIFIS asked whether a lengthy debate could be avoided by simply deleting the last two sentences.

21. Mr. SHAHI said that, while he preferred Mr. Banton's amendment, the Committee should be flexible and he was prepared to accept the text as it stood, without any amendment.

22. The CHAIRMAN said that the statements in the two sentences were correct in the original version, making a distinction as they did between the fundamental obligations in article 2 and the remaining articles. Mr. Aboul-Nasr's objection was a valid one, since a reference to "obligations" only would make it necessary to list all the articles of the Convention.

23. Mr. GARVALOV suggested that the first of the two sentences should be amended to read "The 'fundamental obligations' of States parties are laid down in the relevant articles.", and the final sentence deleted.

24. Mr. PARTSCH said he did not think that the distinction made between "fundamental" and "remaining" obligations was very felicitous, and suggested that the two sentences should be deleted and replaced by "The anti-discrimination obligations of States parties are laid down in articles 2 to 7.". In that way, other obligations of a technical nature were not excluded, and no particular preference was given to articles 2 to 7.

25. Mr. SHAHI said that it must not be forgotten that the Convention had to be read by others outside the Committee and had often proved difficult to interpret in the past. In order to reach agreement, he considered that Mr. Partsch's suggestion was an acceptable compromise.

26. Mr. ABOUL-NASR said that he could accept that suggestion.

27. The CHAIRMAN said he took it that the Committee agreed to replace the last two sentences of paragraph 2 by the amendment proposed by Mr. Partsch.

It was so decided.

Paragraph 2, as amended, was adopted.

Paragraph 3

28. Mr. BANTON proposed that the part of the third sentence which read "and an optional procedure, which enters into effect only when certain conditions

are fulfilled ..." should be amended to read "and an optional procedure, which entered into effect when certain conditions were fulfilled ...", since the optional procedure had already taken effect.

29. Mr. FERRERO COSTA considered that that part of the sentence, concerning the optional procedure under article 14 of the Convention, was confusing and should be expanded to make it clear that the optional procedure entered into effect only for those States that had accepted it.

30. The CHAIRMAN explained that, in view of the substance of article 14 of the Convention, there was no confusion about which States were concerned by the optional procedure.

Paragraph 3, as amended, was adopted.

Paragraph 5

31. Mr. BANTON proposed that the word "mainly" should be inserted between the words "it is" and "with", in order to make the statement more accurate.

It was so decided.

Paragraph 5, as amended, was adopted.

Paragraph 10

32. Mr. BANTON proposed that, for greater accuracy, the first part of the first sentence, reading "the first - and the only obligatory - component" should be amended to read "the first - and for States parties the only obligatory - component".

It was so decided.

Paragraph 10, as amended, was adopted.

Paragraph 11

33. Mr. BANTON pointed out that since the preparation of the study, the Committee had adopted a further decision concerning States parties' reporting procedure. He therefore proposed the insertion, between the second and third sentences, of the following two sentences: "In 1988 the Committee agreed that after submission of an initial comprehensive report, States parties might on the next occasion submit a brief updating report [see document A/43/18, paragraph 24 (c)]. Comprehensive reports should be submitted every four years with updating reports on the intervening occasion."

34. Mr. ABOUL-NASR said that he did not object to the amendment, but drew attention to the fact that the original text corresponded to the Committee's rules of procedure. He was not sure if that applied to the proposed amendment.

35. Mr. SHERIFIS quoted the decision referred to by Mr. Banton and recalled the Committee's recent discussion at the current session (853rd meeting) during which the reporting procedure decided upon by the Committee had been reconfirmed. He did not think there were any grounds for Mr. Aboul-Nasr's fears.

36. The CHAIRMAN concurred with Mr. Sherifis and confirmed that the proposed amendment would not affect the rules of procedure or the content of the Convention.

37. Mr. SHAHI said that the purpose of the Committee's consideration of the study was to bring it up to date so that the Convention could be fully implemented. He had no misgivings about any inconsistency with the rules of procedure, since those rules could in any case be amended by the Committee itself to bring them into line with the Committee's own decisions.

Paragraph 11, as amended, was adopted.

Paragraph 16

38. Mr. BANTON proposed that the beginning of the second sentence should be amended to read "The majority view within the Committee has been that the decision, whether or not to invoke this right", the rest of the sentence remaining unchanged, and that the words "(see A/36/18, paragraphs 168-173, and A/39/18, paragraphs 209-210)" should be added at the end of the paragraph. The first amendment was being proposed for greater accuracy, since he understood that the view expressed had not been shared by all the Committee members at the time.

39. The CHAIRMAN, speaking in his personal capacity, said that he could not accept the idea of pointing to differences of opinion years after a document had been adopted. The study under consideration had been adopted by the Committee as a whole.

40. Mr. SHERIFIS agreed with Mr. Lamptey and suggested that Mr. Banton should not press his amendment.

41. Mr. PARTSCH said that Mr. Banton was absolutely correct in saying that it had been the "majority view" within the Committee that the decision by a State party to invoke its right to initiate a complaint procedure against another State party remained part of the sovereign prerogative of every State party, since that statement faithfully reflected the history of the debate in the Committee on that subject. He personally had not been a member of that majority at the time, but had been in the minority in the light of his own knowledge of discussions in the Third Committee.

42. The CHAIRMAN, speaking in his personal capacity, urged the Committee not to introduce a reference to majority and minority views.

43. Mr. BANTON said that he had proposed his amendment because Mr. Partsch had drawn his attention to the disagreement that had existed in the Committee. The references which he had given at the end of his proposed text had seemed to support his amendment. He thought that whether or not a majority view was mentioned, those references should be included, so that anyone who wished to follow up the matter could consult the relevant passages.

44. The CHAIRMAN said that the system of quoting various reports and documents had not been adopted in the study, although, of course, a change could be made. With regard to majority and minority views, he recalled that there had been long and fundamental arguments in the discussion of article 3 as to whether members had the right to touch on the foreign affairs of a

State, but a consensus had been reached on the Committee's practice. Matters which had been dealt with should not be reopened, and the paragraph should be left as it stood.

45. Mr. FERRERO COSTA and Mr. SHERIFIS supported the Chairman.

46. Mr. SHAHI said that he was prepared to support the Chairman's view but suggested that the Committee should come back to the question if similar problems were encountered later.

It was so decided.

Paragraph 20

47. Mr. BANTON said that paragraph 20 needed revision, because it referred to the first eight years of the existence of the Convention; he therefore proposed that the beginning of the paragraph should read: "Inasmuch as no State party has invoked article 11, the Committee has had no opportunity to develop its practice ...". The words "... adopted rules 68-78 of the Provisional Rules of Procedure ..." in the second sentence should read "... adopted what are now rules 69-79 in the rules of procedure ...".

It was so decided.

Paragraph 20, as amended, was adopted.

Paragraph 22

48. Mr. FERRERO COSTA pointed out that the condition referred to in subparagraph (2) of paragraph 22 had already been fulfilled; the paragraph needed revision to make that fact clear.

49. The CHAIRMAN suggested that a statement should be added in brackets that article 14 had become operational.

It was so decided.

Paragraph 22, as amended, was adopted.

Paragraph 23

50. Mr. BANTON proposed that the word "limitations" should be replaced by the word "qualifications", which seemed more precise.

It was so decided.

Paragraph 23, as amended, was adopted.

Paragraphs 27-30

Paragraphs 27-30 were referred to the Secretariat for the necessary revision.

Paragraph 38

51. Mr. BANTON pointed out that the paragraph referred to the past eight years and proposed that it should be amended to read: "The practice of the Committee so far in discharge ...".

It was so decided.

Paragraph 38, as amended, was adopted.

Paragraph 42

52. Mr. BANTON proposed that, in order to simplify the text, the first sentence of paragraph 42 should be amended to read: "Since the Committee is required by article 14 (8) to report on actions in connection with article 14 but there is no corresponding requirement concerning actions in connection with articles 11-13, it may be inferred that the Committee is not required to report on these."

53. The CHAIRMAN said that that amendment involved a substantive change, since it implied that the Committee was not required to report on actions in connection with articles 11-13. The position taken in the study, however, was that the Committee did report on those articles and he subscribed to that view.

54. Mr. SHAHI said he was not sure that the text of the paragraph was improved by Mr. Banton's amendment.

55. The CHAIRMAN said he took it that no change was required in the paragraph.

It was so decided.

Paragraphs 43-46

56. Mr. BANTON said that the Committee had not had to take any action under article 11 of the Convention and that such action did not seem likely to become an important part of its duties. He therefore thought that paragraphs 44-46 could be dispensed with and therefore proposed that the last sentence of paragraph 43 should be amended to read: "However, when it does, it will probably take into account the contrary view which prevailed when the first version of this document was agreed in 1978 and the drafting history of the Convention."

57. The CHAIRMAN said that the purpose of the revision of the study was not to reopen matters which had already been dealt with. He did not believe that the proposed changes were an improvement.

58. Mr. BANTON said that he would drop his proposal, if the Committee shared that view.

59. The CHAIRMAN said he took it that no amendment to paragraphs 43-46 was necessary.

It was so decided.

Paragraph 48

60. Mr. BANTON said that in view of the decision on paragraphs 43-46, his suggestion on paragraph 48 would probably not be acceptable. The rule of procedure referred to would have to be renumbered; otherwise the paragraph could stand unchanged.

61. The CHAIRMAN said he took it that, except for a renumbering of the rule of procedure, no change was required in paragraph 48.

It was so decided.

Paragraphs 57 and 58

62. Mr. BANTON said that for someone who had joined the Committee in 1986 suggestions made before the Committee had begun to operate were only of academic interest; he therefore questioned whether paragraphs 57 and 58 should be retained.

63. The CHAIRMAN suggested that the paragraphs should be retained for historical purposes.

It was so decided.

Paragraphs 59 and 62

Paragraphs 59 and 62 were referred to the Secretariat for updating.

Paragraph 67

64. Mr. BANTON said that in paragraph 67 and the following paragraphs it was stressed that the Committee was an autonomous body in some respects but at the same time depended on the Secretary-General and United Nations institutions for other purposes. He therefore proposed that the word "organically" in paragraph 67 should be replaced by "functionally", which would indicate the link with United Nations institutions without suggesting dependence in matters where the Committee was autonomous. The word "organic" could be kept where it related to administrative matters.

65. The CHAIRMAN asked whether it was only in administrative matters that the Committee was linked to the United Nations. Was the requirement to report to the General Assembly a functional matter?

66. Mr. GARVALOV said that the Committee was autonomous and that its link to the United Nations was perfunctory: if the question arose of the Committee's very existence, it would be the States parties that took the relevant decision, not the United Nations. He therefore could not accept the term "organically linked" in any part of the document.

67. In reply to a question from Mr. SHAHI, Mr. BANTON said that, in his view, a "functional" relationship implied one that was slightly looser than an "organic" relationship.

68. Mr. SHAHI, Mr. SHERIFIS and Mr. GARVALOV supported Mr. Banton's suggestion.

Paragraph 67, as amended, was adopted.

Paragraph 70

69. Mr. BANTON said that he was not proposing that the word "organically" should be changed to "functionally" in the first line of paragraph 70, because it did not give rise to the same difficulty. However, he suggested that the third and fourth sentences of the paragraph should be amended to read: "The secretariat of the Committee is provided by the United Nations Secretary-General. The expenses of servicing the Committee are borne by the United Nations. Before any proposal which involves expenditure is approved by the Committee, the Secretary-General must be consulted in the terms of rule 25. The Committee's meetings are normally held at the Headquarters of the United Nations in New York or Geneva. The reports ...". The rest of the paragraph could be left as it stood.

70. Mr. ABOUL-NASR said that paragraph 70 should use the wording of the Convention and the rules of procedure.

71. The CHAIRMAN thought that there was no need to refer to either New York or Geneva and suggested that the fourth sentence of Mr. Banton's text should be amended to read: "The Committee's meetings are normally held at the Headquarters of the United Nations as provided for in the Convention."

It was so decided.

Paragraph 70, as amended, was adopted.

Paragraph 72

72. Mr. BANTON proposed that the paragraph should be amended to read: "Throughout its existence, the Committee has shown itself to be conscious of both its functional links with the United Nations and the need to safeguard its autonomous status." He noted that the word "functional" was preferable to the word "organic" in that paragraph.

Paragraph 72, as amended, was adopted.

Paragraph 74

73. Mr. BANTON proposed the deletion, in the second sentence of the paragraph, of the words "and the Third Committee has responded positively to that suggestion in recent years" and, in the third sentence, of the word "Moreover". In addition, the last sentence should be amended to read: "It is a matter for regret that the Third Committee has acted on neither of these proposals." The effect of those changes was to remove any impression that the Third Committee had responded positively to the suggestion in question.

74. Mr. GARVALOV said that he could support Mr. Banton's proposal if it was endorsed by the Committee. However, it did not exactly correspond to the facts. In the late 1970s, the Third Committee had considered the annual reports of the Committee separately from the other sub-items. However, the current practice had come about as a result of the adoption by the General Assembly and its Main Committees of procedures designed to make their work more efficient and involving the grouping of related items for consideration. That had been done in connection with the consideration of the annual reports of the Committee and other bodies.

75. Mr. ABOUL-NASR said he did not believe that the Committee should make a statement expressing its regret in the document. It could do so in its annual report to the General Assembly.

76. Mr. SHERIFIS thought that the text should correspond to the actual facts as closely as possible. As drafted, the paragraph did not reflect the actual situation.

77. Mr. AHMADU stressed that some members of the Third Committee laid great emphasis on the work of the Committee. He would have difficulty in supporting an expression of regret in the text. However, he could accept the other amendments proposed by Mr. Banton.

78. Mr. SHAHI endorsed the views expressed by Mr. Ahmadu and thought that it would be inappropriate to express regret in the text. In his opinion, the paragraph could end with the words "other sub-items".

79. The CHAIRMAN thought that the Committee could retain the sentence "In an effort to make the dialogue between the two bodies more useful, the Committee has suggested that a member appointed by it be invited to participate in the deliberations of the Third Committee on the Committee's annual reports".

80. Mr. ABOUL-NASR thought that the Committee should retain only the first sentence and not become involved in excessive detail.

81. Mr. AHMADU said that the suggestions in the paragraph were useful and that the requests made were not unreasonable. He supported the deletion of the words "and the Third Committee has responded positively to that suggestion in recent years", the word "moreover" and the last sentence.

82. The CHAIRMAN said that the statements made in the paragraph were factual. If he heard no objection, he would take it that the Committee agreed that the second sentence should end with the words "other sub-items", that the third sentence should begin with the words "In an effort", and that the last sentence should be deleted.

It was so decided.

Paragraph 74, as amended, was adopted.

New paragraph 75 A

83. Mr. BANTON proposed the insertion of the following new paragraph:

> "The United Nations Economic and Social Council in 1973 instituted the Decade for Action to Combat Racism and Racial Discrimination, followed in 1983 by the Second Decade. As part of this programme, it has organized a First and a Second World Conference to Combat Racism and Racial Discrimination and has held a series of seminars. As a contribution to the Decades, the Committee has published three special studies (CERD/1, 2 and 3 - see Bibliography). It has nominated members to represent the Committee at these conferences and relevant seminars."

84. Mr. GARVALOV supported the text proposed by Mr. Banton, which he thought was very useful. However, he wished to make one minor amendment. While recognizing that the Economic and Social Council had been the first body to raise the issue of the Decade, it had actually been the General Assembly which had instituted the First and Second Decades for Action to Combat Racism and Racial Discrimination. Consequently, he proposed that the words "Economic and Social Council" should be replaced by the words "General Assembly".

85. The CHAIRMAN said that Mr. Garvalov was correct and suggested that his proposal should be accepted.

It was so decided.

86. Mr. AHMADU, referring to the three special studies mentioned in Mr. Banton's proposal, thought that their titles should be given in the body of the paragraph.

87. Mr. ABOUL-NASR thought that the titles could be placed in a footnote.

88. Mr. SHERIFIS said that he supported the proposal made by Mr. Ahmadu. It should not be difficult to place the titles in the text of the paragraph itself.

89. Mrs. SADIQ ALI, referring to the third sentence of the proposed paragraph, said that another contribution made by the Committee to the Decade was the decision taken at its fifth session in August 1978 in which it had called upon States parties at the earliest date possible to reconsider any relations that they might have with the racist régime of South Africa. She thought that reference to that decision should be included in the paragraph.

90. The CHAIRMAN noted that all the decisions of the Committee were contained in an annex to the document.

91. He suggested that the titles of the special studies should be included in the paragraph rather than in a footnote. If he heard no objection, he would take it that members agreed to adopt Mr. Banton's proposal, thus amended.

It was so decided.

New paragraph 75 A, as amended, was adopted.

Paragraph 76

92. Mr. BANTON said, with regard to the process of co-operation mentioned in the second sentence of the paragraph, that UNESCO seemed to have embarked on that operation without consideration of what form a division of labour should take. He proposed that the sentence should be replaced by the following text: "In 1976 the Committee suggested that the latter organization try to avoid duplication between the reporting obligations arising from its Declaration on Race and Racial Prejudice and those arising from the Convention. It invited UNESCO periodically to transmit information on its experience. This matter has not been a subject for formal consideration by the Committee since 1982."

93. The CHAIRMAN said it was also true that the Committee had had substantial co-operation with UNESCO for some years. For example, that organization had sent representatives to the Committee and had invited it to hold a session in Paris.

94. Mr. PARTSCH said that there were positive and negative aspects involved in the relationship between the Committee and UNESCO.

The meeting rose at 1 p.m.

856th meeting

Friday, 25 August 1989
at 3.35 p.m.

Chairman: Mr. LAMPTEY

PRESS CONFERENCE TO BE HELD BY THE COMMITTEE (*concluded*)

1. Mr. RESHETOV pointed out that a communication had just been distributed concerning the press conference that was scheduled to be held on the occasion of the Committee's twentieth anniversary. In his opinion, at the press conference it would be unwise to give special prominence to the Committee's financial difficulties; above all, stress should be laid on the need to draw the attention of the media and public opinion to the Committee's work. It was essential to publicize that work, so that the public at large was made aware that it was just as important as the work done by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. It was important to show that the unique information on racial discrimination available to the Committee did not exist anywhere else and that it could serve as a basis for discussions on certain problems in other United Nations bodies concerned with human rights. Although it seemed logical to mention the Committee's financial difficulties at the end of the press conference and in the right context, it would be tactless to speak only of them.

2. The CHAIRMAN said that he, too, considered that attention should not focus only on the financial problems. The purpose of the press conference was to promote a better understanding of the Committee's work, and Mr. Reshetov could rest assured that members of the Bureau participating in the press conference would take the necessary steps to ensure that the Committee's work enjoyed all the necessary publicity.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 7) (*continued*)

Proposed revision of the study entitled Committee on the Eliminaiton of Racial Discrimination and the Progress Made towards the Achievement of the Objectives of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/1) (*continued*)

Paragraph 76 (*concluded*)

3. Mr. SHERIFIS supported the proposal made by Mr. Banton (855th meeting, para. 92) to the effect that the second sentence in paragraph 76 of the study should be replaced by the following text: "In 1976 the Committee suggested that the latter organization try to avoid duplication between the reporting obligations arising from its Declaration on Race and Racial Prejudice and those arising from the Convention".

4. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt paragraph 76 as amended

It was so decided.

Paragraph 76, as amended, was adopted.

Paragraph 77

5. Mr. BANTON proposed that, at the beginning of paragraph 77, the words "On the other hand" and, further on, the words "or changing the venue and dates of some of its sessions" should be deleted. He pointed out that paragraph 77 referred to measures and resolutions adopted outside the Committee which an attempt had been made to apply to the Committee. The paragraph also dealt with changing the venue and dates of some of the Committee's sessions, which he thought it better not to refer to.

6. Mr. PARTSCH said that what Mr. Banton had just stated was logical, since the question of changing the venue and dates of some of the Committee's sessions was closely linked with financial problems and did not directly affect the Committee's autonomy in so far as its work was concerned. He therefore supported Mr. Banton's proposal.

7. Mr. SHAHI said that he had no difficulty in accepting Mr. Banton's amendment, although he was not sure that it was the best way of safeguarding the Committee's autonomy.

8. Mr. SHERIFIS said that it seemed to him that the original text merely recalled the facts. In the past, much time had been wasted debating the question of the venue and dates of the Committee's sessions. He would therefore prefer to keep the original text as it stood; however, he would not oppose Mr. Banton's amendment.

9. The CHAIRMAN, speaking in his personal capacity, said that he, too, would prefer to keep the original text, since it was a historic document. It was quite true that the venue had been changed without the Committee being informed or even consulted. It would be advisable to report that. To delete the mention of events that had actually occurred was not the best way of preserving the Committee's autonomy. The Committee had requested the opinion of the Legal Counsel on the matter, and the fact that the latter had agreed to the Committee's request proved that the question was important.

10. Mr. GARVALOV asked whether the Committee had obtained satisfaction as to the venue at which its sessions were to be held.

11. The CHAIRMAN said that a question of principle was involved. The Committee had succeeded in obtaining recognition of its right to be consulted. Nevertheless, he was quite powerless when the Secretariat's Office of Conference Services refused to organize sessions on the dates which he requested. It was quite abnormal that he should not be entitled to have his say and that the Office of Conference Services should merely inform him of the dates which it had decided.

12. Mr. SHAHI said that he did not believe that the second sentence of paragraph 77 was important. Paragraph 78, however, was definitely important. It referred to a legal opinion concerning the status of the Committee. Nevertheless, if some members considered that paragraph 77 should be retained as it stood, he would have no objection.

13. Mr. BANTON recalled that the venue of the Committee's sessions had been changed in 1978. Since then, there had been consultations and also protests. He therefore considered that it was less important to mention those facts in

the revised version of the study, since it reported a situation which did not extend beyond 1978. Nevertheless, if members of the Committee insisted on retaining the whole text, he would have no objection.

14. The CHAIRMAN said that in his opinion the words "On the other hand" at the beginning of the paragraph should be deleted and the rest of the paragraph should be retained in its entirety, since it was concerned with historical events. He was strongly opposed to allowing new members of the Committee to claim that what had been done before had not been appropriate. Consequently, he did not accept the proposed amendment, which, moreover, did not improve the text.

15. Mr. SHAHI said that the Committee must be logical. If it retained the words "or changing the venue and dates of some of its sessions", it could not be stated that it "has successfully endeavoured to bring about corrective action by those concerned". The Committee had not succeeded in preventing the venue and dates of its sessions from being changed.

16. The CHAIRMAN said that he did not see why what had been logical at the time when the text had been adopted was no longer so at the moment.

17. Mr. GARVALOV said that the statement of the facts presented in the study had probably been logical in 1978 but it was no longer so in 1989.

18. Mr. PARTSCH, proposed in order to remedy the present illogical situation resulting from the fact that the text had been adopted in 1978, that if the Committee wished to retain the words relating to the changes in the dates and venue of its meetings, of which he himself did not approve, the words "in certain cases" be inserted between the words "the Committee has successfully endeavoured" and the words "to bring about corrective action by those concerned". Thus the Committee would not be claiming that its endeavours had always been successful.

19. Mr. SHERIFIS said that, while he supported the view that the text should be retained in its entirety, it would nevertheless be advisable to delete the word "successfully" in the English version and to amend the French version accordingly, since, although it was true that the Committee had endeavoured to bring about corrective action by those concerned, it had not always been successful. He therefore proposed that the reference to the venue and dates of the Committee's sessions should be retained and that the word "successfully" should be deleted.

20. The CHAIRMAN suggested that the words "On the other hand" at the beginning of paragraph 77 be deleted and that the proposal made by Mr. Sherifis should be adopted. In the absence of any objection, he would take it that paragraph 77, as amended, was adopted.

It was so decided.

Paragraph 77, as amended, was adopted.

Paragraph 78

21. Mr. BANTON said that paragraph 78 referred to an opinion given by the Office of Legal Affairs of the United Nations Secretariat which, as Mr. Shahi had already pointed out, was important. Since then in a statement dating from 1985, it had been reaffirmed that the Committee was an autonomous body constituted under an international instrument; it would therefore be advisable for that statement, too, to appear in the text of paragraph 78. His proposed wording was as follows: "... the right to give authoritative interpretations of the Convention, and the powers of the Committee thereunder, rested not with the General Assembly, but, in the first instance, with the Committee itself, as the body responsible for monitoring compliance with the Convention, and ultimately with the States Parties."

22. Mr. ABOUL-NASR asked who had made the statement when it had been made and where the quotation had been taken from. Had the statement been made by the Secretariat's Legal Counsel?

23. Mr. BANTON replied that the quotation in question was taken from the summary record of the debate on the Committee's report that had taken place at the General Assembly in 1985. 34/ It was an opinion given by Mr. Scott, representing the Office of Legal Affairs of the Secretariat, in connection with a draft resolution concerning a dispute between two States parties (A/C.3/40/L.14/Rev.1). It was on that occasion that the Committee's autonomy had been reaffirmed.

24. Mr. ABOUL-NASR said that care must be taken when interpreting the Convention. The passage quoted related to an opinion with which it was possible to agree or to disagree. The statement should not be quoted out of context, in so far as it indicated that it was for the Committee to interpret the Convention. He had certain reservations in that connection, having regard to the provisions of article 22 of the Convention, and he would prefer paragraph 78 to be retained as it stood.

25. Mr. RESHETOV said that he fully appreciated the spirit in which Mr Banton had drafted his proposal. More importance must, of course, be given to the Committee but, as a specialist in international law, he considered that the quotation contained many elements that were unacceptable. Mr. Banton was correct when he stated that the right of interpreting the Convention rested in the final analysis with States parties. Nevertheless, that right could also rest with the international organization to which States parties to the Convention could delegate their powers in that regard. However, the Committee was not the international organization concerned, and powers of that kind had not been delegated to it. Furthermore, applications for an interpretation of an international instrument were made to the ICJ. Therefore, from the strictly legal point of view, the statement in question was difficult to accept. On the other hand, it was perfectly possible to point out that the Committee was autonomous and to indicate that it had the right, based on the information available to it and the experience which it had acquired, to give its opinion concerning the implementation of the Convention.

26. The CHAIRMAN, speaking in his personal capacity, said that he could see no objection to accepting Mr. Banton's amendment, but paragraph 78 was satisfactory in its present wording, since it reported an opinion given by the Office of Legal Affairs of the United Nations Secretariat which confirmed that

the Committee was not a subsidiary body of the General Assembly but a treaty body and thus did not detract from the rights of States parties or diminish the powers of the ICJ as set forth in article 22 of the Convention.

27. Mr. SHERIFIS said that he was willing to adopt Mr. Banton's proposal, since it seemed to him to be well-founded in law and was in no way incompatible with the provisions of article 22 of the Convention. However, he would have liked Mr. Banton to make it clear that the opinion referred to had been given by the United Nations Office of Legal Affairs.

28. Mr. SHAHI said that he approved of Mr. Banton's amendment, since the Committee often gave interpretations of different articles of the Convention. Moreover, he saw no contradiction between the wording of the amendment and the provisions of article 22 of the Convention, since the latter concerned only disputes between States parties.

29. Mr. BANTON said that the opinion in question had been given in 1985 at the request of a member of the Third Committee of the General Assembly who had contested the General Assembly's power to give instructions to the Committee, since the Assembly had considered that the Committee should not take into account information relating to territories to which the Declaration on the Granting of Independence to Colonial Countries and Peoples 35/ applied unless certain conditions were fulfilled. The opinion on the matter given by the United Nations Office of Legal Affairs could, in his view, be useful to the Committee if it were to find itself in a similar situation again.

30. He readily agreed with the suggestion made by Mr. Sherifis and therefore proposed that the Secretariat should be requested to look up the full text of the passage in question in the official documents of the General Assembly and suggested that the beginning of his amendment should be re-cast to read: "This was reaffirmed in 1985 by a further opinion from the United Nations Office of Legal Affairs ...".

31. Mr. ABOUL-NASR said that, whatever Mr. Shahi might have said, article 22 of the Convention dealt with the interpretation of the Convention. Furthermore, Mr. Banton's quotation was taken from a summary record and not from a verbatim transcript. He would therefore like to obtain the full text of the opinion quoted so as to be able to study it and reach a conclusion on the matter.

32. Mr. SHAHI, referring to Mr. Aboul-Nasr's comments, pointed out that article 22 of the Convention dealt with "Any dispute between ... States Parties". In his view, there was no contradiction between the amendment proposed to paragraph 78 and the provisions of article 22 of the Convention.

33. Mr. BANTON said that Mr. Aboul-Nasr was justified in expressing misgivings regarding a quotation taken from a summary record, since a legal opinion was involved.

34. Mr. SHERIFIS persisted in his view but joined Mr. Aboul-Nasr in suggesting that the Committee should request the Secretariat to look up the original text of the legal opinion in the full records of the General Assembly, indicating the relevant part.

35. The CHAIRMAN said that, if it was to follow the suggestions made, the Committee would be obliged to request a further opinion from the United Nations Legal Counsel. Such an opinion had already been given by the representative of the Office of Legal Affairs present at the debates in the Third Committee, which were covered by summary records. It was therefore merely a question as to whether the opinion was pertinent and valid. Mr. Aboul-Nasr's position would be justified if what was involved was a dispute between States parties to the Convention. However, the Committee had no disputes before it. It was merely interpreting the Convention in first instance. In the event of a dispute, it would request an advisory opinion from the ICJ. In that sense, paragraph 78 did not conflict with the provisions of article 22 of the Convention.

36. Mr. ABOUL-NASR said that his position remained unchanged but that, in order not to hold up the Committee's work, he was willing to accept the amendment proposed to paragraph 78.

37. Mr. SHAHI said that the argument underlying the amendment proposed to paragraph 78 was valid even if the Committee did not have the full text of the opinion referred to.

38. The CHAIRMAN proposed that the Committee should request the Secretariat to look up the original quotation so that it could be referred to in paragraph 78.

It was so decided.

Paragraph 78, as amended, was adopted.

Paragraph 79

39. Mr. BANTON proposed that the words "during its first eight years" be replaced by the words "so far".

It was so decided.

Paragraph 79, as amended, was adopted.

Paragraphs 80, 81, 84 and 85

Paragraphs 80, 81, 84 and 85 were referred to the Secretariat for updating.

Paragraph 82

40. Mr. BANTON said that changes had occurred since paragraph 82 had been drafted; he therefore proposed that the whole of the paragraph after the first sentence, should be replaced by a revised passage prepared by the Secretariat.

It was so decided.

Paragraph 82, as amended, was adopted.

Paragraphs 87-89

41. Mr. BANTON proposed that paragraphs 87-89 should be updated to cover the action taken within the United Nations to assist States parties. It would also be necessary to state that the Committee was afraid that the cancellation and curtailment of sessions as a result of the Organization's financial difficulties since 1986 - to be referred to later - might have a negative effect upon the readiness of States to submit reports. It should also be mentioned that in 1981 the Committee had been obliged to agree that, exceptionally, a State party might present two reports in one and the same document (see A/36/18, para. 26). He proposed that the Secretariat should be requested to prepare a draft of a length not exceeding that of the paragraphs concerned.

42. The CHAIRMAN suggested that, for historical reasons, paragraph 87 be retained and that the secretariat should be requested to draft a revised version of paragraphs 88 and 89.

It was so decided.

Paragraph 92

43. Mr. BANTON proposed that the word "two-year" should be deleted before the word "period" in the second sentence.

44. The CHAIRMAN said that it was necessary to retain that word, since it reflected one of the requirements of the Convention.

The amendment to paragraph 92 was rejected.

Paragraph 95

45. Mr. RESHETOV asked whether there was any justification for retaining paragraph 95, which seemed to him to duplicate paragraph 94.

46. The CHAIRMAN said that paragraph 95 reflected a situation which had already occurred and which could occur again when a new State became a party to the Convention. In fact, there were still States parties which, in order to avoid any new obligation under Part I of the Convention, invoked the fact that their ideology, religion or constitution prohibited any form of discrimination. It was therefore necessary to retain paragraph 95.

Paragraph 96

47. Mr. BANTON proposed that, in the first sentence, the words "and diminishing" should be deleted, with the addition, after the first sentence, of the words "Some misconceptions have been cleared up in the dialogue with the Committee. More serious has been the problem of incomplete reports".

It was so decided.

Paragraph 96, as amended, was adopted.

Paragraph 97

48. Mr. BANTON proposed that the whole text after the first sentence should be replaced by the words: "The Committee has therefore covered these matters in its Revised General Guidelines of 1983".

It was so decided.

Paragraph 97, as amended, was adopted.

New paragraph 107 A

49. Mr. BANTON proposed the addition of a new paragraph 107 A reading:

> "In 1980 the Committee adopted a set of Revised General Guidelines concerning the form and content of reports by States parties, into which were incorporated in 1982 additional guidelines for the implementation of article 7".

It was so decided.

New paragraph 107 A was adopted.

Paragraphs 108 and 110

50. Mr. BANTON proposed that "in 1972" should be added after the words "sixth session", that "rule 64 A" should be replaced by "rule 64", and that the latter change should also be made in paragraph 110.

It was so decided.

Paragraphs 108 and 110, as amended, were adopted.

New paragraph 108 A

51. Mr. BANTON proposed the addition of a new paragraph 108 A reading:

> "In 1979 the Committee clarified the procedure envisaged by this rule by adopting decision 1 (XIX) as follows:
>
> 'The Committee on the Elimination of Racial Discrimination
>
> Decides that, when adopting a decision concerning information supplied by a State Party to the International Convention on the Elimination of All Forms of Racial Discrimination relating to conditions in its territory, it will follow the procedure of asking the representative of the State Party concerned to withdraw from the Committee table as soon as consideration of the report has been completed; the representative may, if he wishes, be present when the Committee's decision is announced.'

That formulation made it possible for the Committee to hold a private meeting before announcing the decision."

It was so decided.

New paragraph 108 A was adopted.

Paragraph 109

52. Mr. BANTON proposed that the present text should be replaced by the following:

> "Most States parties have availed themselves of the opportunity provided by the practice described in paragraph 108. The experience of the Committee has been gratifying. If the new practice mentioned in paragraph 11 above develops, it will be helpful if States parties are represented when comprehensive reports are examined, even if they are not represented in connection with the updating reports in intervening years."

53. The CHAIRMAN suggested that the words "even if they are not represented in connection with the updating reports in intervening years" at the end of the proposed text should be deleted.

It was so decided.

Paragraph 109, as amended, was adopted.

Paragraph 111

54. Mr. BANTON proposed that "new rule 66 A" should be replaced by "rule 67" and that the same change should also be made in paragraphs 113 and 114.

It was so decided.

Paragraph 111, as amended, was adopted.

Paragraph 113

55. Mr. BANTON explained that his proposal was to amend the number of sessions of the Committee, which was obviously necessary, and to add, at the end of the paragraph, the following sentence: "One of the reasons for this is that the Committee lacks any independent means for ascertaining the facts relevant to a determination under rule 67." It seemed that although the Committee had so far never decided that any particular State had not discharged some of its obligations (para. 114) and had therefore never made "suggestions and general recommendations" under paragraph 3 of rule 67 of the rules of procedure, the reason was that it was not provided with an independent means of inquiry. That factor, without being essential, was worth pointing out.

56. The CHAIRMAN said that the proposed amendment introduced a new element that was sufficiently important for the Committee to give it careful consideration. In his opinion, it was difficult to affirm that the Committee could not ascertain the facts stated in a report when it was considering the report, since experience showed that members of the Committee were able to

have recourse to other official documents or to other sources to ascertain whether information was missing. Rule 67 of the rules of procedure was concerned with the incompleteness of information. Although the Committee had not so far made "suggestions and general recommendations" under paragraph 3 of rule 67, it had never failed to point out that the information supplied had been insufficient whenever it had considered it necessary to do so.

57. Mr. BANTON said that he would not press the Committee to approve his proposal. Nevertheless, he considered that it was not unjustified, since although, as was stated in the second sentence of paragraph 114 of the study, the Committee "as such had not formally pronounced itself to that effect with reference to any particular State party", that was partly because it lacked independent powers of inquiry.

58. The CHAIRMAN pointed out that, unfortunately, rule 67 of the rules of procedure was not really concerned with States parties' compliance with their obligations but with the provision of information by them. When, during the consideration of a State party's report, the Committee felt that the information supplied was insufficient, it was perfectly entitled to request that State to supply supplementary information, and it had not failed to do so.

59. Mr. ABOUL-NASR said that if Mr. Banton meant that the Committee was entitled to pronounce judgement, he could in no way agree with him, since the Committee was not entitled to make value judgements concerning States.

60. Mr. PARTSCH said that he did not think that rule 67 of the rules of procedure was concerned with the quantity of information supplied in reports, but with the quality; in that respect he agreed with Mr. Banton's proposal. It was true that if the Committee suspected that the information supplied was incorrect, it did not have the necessary means of verifying it. That was the sense of the proposed sentence. It was a major disadvantage in comparison with, for example, the European Commission of Human Rights, which was empowered to visit the place concerned in order to ascertain the situation.

61. Mr. YUTZIS said that he did not see how the Committee would be exceeding its powers by accepting Mr. Banton's proposal. At every session individual members of the Committee had always pointed out to representatives of States parties that they considered that the State concerned had not complied with its obligations. On the other hand, the Committee had never made such a judgement collectively, in its capacity as a Committee. As far as value judgements were concerned, it was clear that any opinion expressed in order to emphasize, for example, the inadequacy of the information supplied by States parties contained a value judgement, which the Committee was not prohibited from making.

62. Mr. GARVALOV said that Mr. Banton's proposal could be interpreted in different degrees; if the question being asked was why the Committee had no mandate to undertake missions of inquiry, he himself could not accept the proposal.

63. Mr. BANTON replied that rule 67, paragraph 3, of the rules of procedure, on which his proposal was based, stipulated that: "If ... the Committee determines that some of the obligations of that State under the Convention have not been discharged, it may make suggestions and general recommendations ..."; consequently, it really was possible for the Committee, as a collective body, to inform a State party that in its opinion the State party had not discharged some of its obligations.

64. The CHAIRMAN, speaking in his personal capacity, said that he understood Mr. Banton's intention but agreed with Mr. Garvalov that the proposed wording would take the Committee too far. In his opinion, nobody had ever envisaged that the Committee could one day undertake missions of inquiry, and if such a possibility had been envisaged, many countries would never have ratified the Convention.

65. It was true that rule 67 of the rules of procedure authorized the Committee to give its opinion on a report but - and that was the vital point - on the basis of the reports and information submitted by States parties. Since Mr. Banton's proposal involved no practical consequences, he was not opposed to its adoption, but he could only contest the grounds for it.

66. Mr. ABOUL-NASR objected that the Committee was not a court and had no powers of inquiry. Furthermore, its mandate was laid down by the Convention and not by its rules of procedure, which it had drafted itself.

67. Even supposing that the rules of procedure were in fact the text from which the Committee's powers were derived, rule 67, paragraph 3, invoked by Mr. Banton, in no way provided that the Committee could declare that a State party was not discharging its obligations; the Committee could only make "suggestions and general recommendations".

68. Mr. PARTSCH recalled that at the early sessions of the Committee one member, Mr. Ingles, had attracted a good deal of criticism for having quoted sources of information other than reports, a practice which had, however, become common. Mr. Aboul Nasr was interpreting rule 67, paragraph 3, of the rules of procedure without taking into account the words "on the basis of its consideration of the reports and information supplied by the State party". The Committee's whole work consisted in examining a report on the basis of the understanding which it had formed of the situation as a result of reading various documents. The Committee would recall that under the régime of the colonels, Greece had submitted to the Committee a constitution literally copied from the Constitution of the Federal Republic of Germany, overlooking a certain article under which all the fundamental rights set forth in the first part of the Constitution had been suspended. That example clearly showed that the information supplied by States would not suffice, and nothing prevented the Committee from making "suggestions and general recommendations" on the basis of other sources of information. If the Committee were deprived of the possibility of having recourse to other sources, it would no longer be able to consider properly the reports submitted to it.

69. Mr. YUTZIS agreed that the Committee was not a court; nevertheless, he was convinced that any question or comment automatically implied a judgement on the actual situation; that was, moreover, what members did individually. To provide for the possibility that the Committee "as such" might indicate that in its opinion a State was or was not honouring its obligations would still be strictly within the limits of the Committee's mandate.

70. Moreover, no one would deny that no country in the world was willing to lay itself bare before the Committee. For example, he had carefully read the reports submitted by the Government of Argentina between 1976 and 1983, as well as the summary records of the meetings at which they had been considered, and he had been able to ascertain that the reports did not give an account of

the hundredth part of the crimes committed at the time and that the questions asked by members had not reflected the true situation either for the simple reason that they had referred to the reports.

71. Finally, rule 67, paragraph 3, clearly indicated that the possibility of making "suggestions and general recommendations" followed from the previous proposition stipulating "If ... the Committee determines that some of the obligations of that State ... have not been discharged ...". Nothing in the rule prevented the Committee from pronouncing a collective judgement; quite the contrary, since the term used was "the Committee".

72. Mr. SHAHI noted that the Committee was divided over a technical subtlety which in no way called into question the procedure followed for the consideration of reports. Although it was true that the Committee as such had never formally pronounced itself with reference to any particular State, individual members asked questions that implied a general opinion by the Committee. For example, when the report of the Libyan Arab Jamahiriya had been considered, only one member had made a statement, but the Chairman had summed up the general opinion by concluding that the Committee approved the observations of the rapporteur appointed to make a preliminary examination of that State's report. Furthermore, members of the Committee very often had recourse to other sources of information, such as United Nations documents and even the press. If they did not do so, the Committee would clearly not be able to discharge its duties.

73. Paragraphs 113 and 114 of the study, and consequently the amendment proposed by Mr. Banton to paragraph 113, were of questionable value because they expressed opinions and did not relate to facts. He was not making a proposal, but it seemed to him that the Committee could dispense with those two paragraphs.

74. Finally, he shared the view that the rules of procedure could not confer upon the Committee a mandate broader than that given to it by the Convention, by which it was bound.

75. Mr. ABOUL-NASR said that he agreed with Mr. Shahi in every respect.

76. The CHAIRMAN stressed that there was no conflict between the rules of procedure and the Convention, since the rules of procedure were in conformity with the Convention. Referring to Mr. Partsch's allusion to what had happened at the early sessions of the Committee, he stressed that practice since then had made it possible to clarify the situation: the Committee relied, in fact, on objective information external to the reports submitted by States parties; it was, however, aware that certain information could not be considered. The dispatch of missions of inquiry to individual countries went beyond the Committee's mandate.

77. Referring to Mr. Shahi's comments on rule 67, paragraph 3, of the rules of procedure, he pointed out that according to that paragraph the Committee must first of all "determine" that a State party had not discharged some of its obligations; only then could it make suggestions and recommendations under article 9, paragraph 2, of the Convention. In that connection he also pointed out that the Committee should not seek confrontation with States parties, since the Convention had to become a universal instrument; the Committee's approach was based more on persuasion.

78. Mr. GARVALOV pointed out that the kind of information derived from sources other than States parties that could be accepted by the Committee had not yet been clearly understood. For example, information derived from a United Nations body and information derived from a non-governmental organization could not be treated in the same way. In order to avoid confusion, he asked Mr. Banton not to press his amendment and to accept paragraph 113 in its present form.

79. Mr. PARTSCH said that Mr. Banton's amendment to paragraph 113 went too far: instead of stating that "the Committee lacks any independent means ...", the text could read "the Committee does not have sufficient means ...".

80. Mr. BANTON acknowledged that his amendment gave the impression that the Committee had refrained from taking the decisions referred to in rule 67, paragraph 3, for only one reason, whereas in fact there were several.

81. The CHAIRMAN said that, in view of the comments that had just been made, he proposed to leave paragraph 113 in its present form on the understanding that the number of sessions would be updated.

It was so decided.

Paragraph 113 was adopted on that understanding.

Paragraph 118

82. The CHAIRMAN asked whether the Committee wished to delete the words "or general recommendations" in the last sentence of paragraph 118, as proposed by Mr. Banton.

It was so decided.

Paragraph 118, as amended, was adopted.

Paragraph 132

83. Mr. ABOUL-NASR said that he was afraid that Mr. Banton's proposal to add the words "at the relevant time" in the second sentence of paragraph 132 would not take account of new occupations of territories.

84. The CHAIRMAN took the view that the amendment improved the text of the paragraph by establishing a distinction between a period when a State was not a party and a different period when it had become a party; he therefore suggested that the amendment should be adopted.

It was so decided.

Paragraph 132, as amended, was adopted.

Paragraph 134

85. Mr. GARVALOV and Mr. PARTSCH took the view that in paragraph 134 it was preferable to group situations together by mentioning the Golan Heights after Cyprus. Chronology would impose another order, but it was less important.

86. Mrs. SADIQ ALI considered that the Committee was not empowered to concern itself with the occupied Arab territories.

87. The CHAIRMAN replied that the Committee was empowered to do so, since Israel had ratified the Convention.

88. Mr. ABOUL-NASR recalled that there had already been a controversy in the Committee over the territories occupied by Israel. It might be better not to revive it.

89. Mr. PARTSCH objected that the Committee must decide who was empowered to report on occupied territories - the occupying power or the power which had lost control of part of its territory. For his part, he considered that it should be the occupying power, without, of course, the receipt of information from such a source implying that the Committee recognized the occupation in any way.

90. Mr. SHAHI said that a State party should not submit information on a territory which it was occupying. When a State party ratified the Convention, it did so for its own territory. It would be wrong for the Committee to give the impression that the fact of occupation conferred upon the occupying power the right to submit a report.

91. Mr. BANTON proposed that paragraph 134 should be clarified by amending the wording to read as follows: "... the Panama Canal Zone, Cyprus and - before the ratification of the Convention by Israel - the Golan Heights, the West Bank of the River Jordan and the Sinai Peninsula".

92. Mr. PARTSCH considered that the wording just proposed by Mr. Banton avoided any controversy: first of all reference was made to States which were not parties, then to a State which had become a party. Replying to Mr. Shahi, he said that it was important to know the action taken to implement the Convention by States parties in territories other than their own. The object was to obtain as much information as possible under article 9 of the Convention.

93. Mr. YUTZIS agreed with Mr. Partsch. He recalled that in the situation to which Mr. Aboul-Nasr had referred, Egypt had stated that it could not supply information on the territories that had been occupied by Israel; the Committee had not been able to solve that problem, and was still unable to do so. For the moment, Mr. Banton's wording could be adopted, since, if it was read carefully, it gave rise to no dispute.

Paragraph 134, as amended, was adopted.

94. The CHAIRMAN announced that the discussion on the proposals submitted by Mr. Banton for the revision of the study would be resumed at the next meeting.

The meeting rose at 6 p.m.

857th meeting

Monday, 28 August 1989
at 10.30 a.m.

Chairman: Mr. LAMPTEY

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 7) (continued)

Proposed revision of the study entitled Committee on the Elimination of Racial Discrimination and the Progress Made towards the Achievement of the Objectives of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/1) (concluded)

1. THE CHAIRMAN invited the Committee to continue its examination of Mr. Banton's proposed amendments to the study.

Paragraph 135

2. Mr. BANTON said that he wished to propose, in the third line from the end of paragraph 135, the insertion of the words "demographic or other" after the words "to ensure that no". He thought it necessary to propose that amendment, because members had drawn attention on several occasions to population changes as the source of heightened discrimination.

3. Mr. SHERIFIS said he supported that proposal.

4. The CHAIRMAN, speaking in his personal capacity, thought that the matter was not as simple as it appeared. Members should not stress the demographic aspect because of some disputes that were taking place at the present time in various countries. In his opinion, the text should remain as it stood.

5. Mr. SHAHI referring to the first two lines of the paragraph, said that in its various decisions, the Committee had also considered the demographic aspect. The proposal had nothing to do with current events and merely sought to update the study with regard to the decisions the Committee had taken.

6. In response to Mr. Lamptey and Mr. Shahi, Mr. SHERIFIS said that the study had been adopted 10 years previously and required updating because the decisions taken by the Committee after 1979 had emphasized the demographic aspect of various questions.

7. Mr. BANTON said he, too, recalled that many references had been made to the demographic aspect in decisions taken by the Committee.

8. Mr. PARTSCH said that the paragraph had been written with a view to reporting on the action of a non-member State. In that case, the Committee had also addressed the General Assembly. He supported the proposal, which would be useful and was not limited to demographic changes alone.

9. In response to a question put by Mr. Shahi, Mr. SHERIFIS said that the Committee had dealt with the demographic issue after 1979 and had requested the General Assembly to act on that aspect together with other aspects directly related to the Convention.

10. The CHAIRMAN said that if he heard no objection, he would take it that the amendment proposed by Mr. Banton was accepted.

It was so decided.

Table on page 16

Paragraph 135, as amended, was adopted.

11. Mr. BANTON, referring to the table appearing on page 16 of the study, proposed that it should be either deleted or updated. If it was to be updated, it would be necessary to add two references to subsequent discussions about the Golan Heights and to include a footnote concerning the statement at the end of paragraph 132 about the Committee's lack of competence.

12. Mr. SHAHI asked whether Mr. Banton's proposal would necessitate the amendment of paragraph 132. In his opinion, there could be a difference of opinion on the issue. For example, where a State's territory was occupied by another State, some States might consider that the occupying State should be subjected to questioning. Other States might believe that that would confer a kind a legitimacy. Therefore, if Mr. Banton's proposal involved amending paragraph 132, he did not think that it would be possible to make a categorical statement.

13. Mr. BANTON said that he withdrew his proposal.

Paragraph 146

14. Mr. BANTON, referring to the fourth sentence in paragraph 146, proposed that the words "the normal procedure" should be replaced by the words "paragaph 108A as set out above". In his opinion, the words "normal procedure" could give rise to uncertainty, and the reference to a particular paragraph therefore eliminated any doubt in that connection.

15. The CHAIRMAN said that while the Committee had adopted the decision in question, it had not been considering reports strictly in accordance with the procedure described in paragraph 108A. The words "normal procedure" embraced both the procedure in paragraph 108A and other arrangements.

16. Mr. GARVALOV suggested the formula "in accordance with the well-established practice of the Committee.".

17. The CHAIRMAN said that as the Committee had not strictly followed the procedure in paragraph 108A, if paragraph 146 referred solely to that paragraph, it would not be quite accurate.

18. Mr. BANTON said that he withdrew his proposal.

19. The CHAIRMAN said that if he heard no objection, he would take it that the Committee agreed to leave the paragraph as it stood.

It was so decided.

Paragraph 150

20. Mr. BANTON said that the last sentence of paragraph 150 required some updating. Therefore, he proposed that the last sentence should be replaced by the following text: "Similar proposals were discussed during the Committee's thirty-third and thirty-sixth sessions".

It was so decided.

Paragraph 150, as amended, was adopted.

New paragraph 150A

21. Mr. BANTON proposed the addition of the following new paragraph 150A:

> "On this last occasion the Committee agreed that rapporteurs be appointed from amongst its members who would be responsible for a thorough study and evaluation of each State report, for preparing a comprehensive list of questions to be put to the representative of the reporting State and for leading the discussion in the Committee when the report was taken up for consideration. It was understood that other members of the Committee would not be precluded from raising specific questions of interest to them or from making comments. This procedure was to be applied on an experimental basis at the forthcoming thirty-seventh session. The Committee also agreed to the differentiation of comprehensive and updating reports referred to in paragraph 11 above."

22. Mr. GARVALOV, referring to the penultimate sentence of the paragraph, suggested that it should be amended to read "This procedure was applied on an experimental basis at the thirty-seventh session".

23. Mr. ABOUL-NASR said that the procedure was still an experimental one and could not be finalized after only one session. Moreover, half of the membership of the Committee would change in 1990.

24. The CHAIRMAN said that the proposed new paragraph 150A merely stated the fact that the procedure had been used and did not make any judgement on the success or otherwise of the experiment. The Committee would decide on its possible future application at a later stage. He suggested that the new paragraph should be adopted with the amendment proposed by Mr. Garvalov.

It was so decided.

New paragraph 150A was adopted.

New paragraph to follow paragraph 155 or paragraph 180

25. Mr. BANTON said he proposed that, following either paragraph 155 or paragraph 180, a paragraph should be inserted to describe the Committee's difficulties in deciding whether information furnished in the periodic report of a State party which administered a dependent territory could be used in procedures under article 15. As he understood it, the Committee's practice had been inconsistent. A dispute on the issue had arisen during consideration of a periodic report of the United Kingdom. At that time, the Committee had criticized the United Kingdom's decision to provide information on its

dependent territories in its report under article 9 of the Convention. The United Kingdom had subsequently taken legal advice and addressed a letter of protest to the Committee. He was not an expert on such matters and he therefore asked those who were familiar with the topic to assist the Committee in resolving the problem.

26. Mr. ABOUL-NASR said that he had been unaware of any letter sent to the Committee by the United Kingdom.

27. Mr. BANTON said that the letter had been sent two years previously.

28. The CHAIRMAN confirmed that such a dispute had occurred, although he did not recollect the details. The issue had also been broached during the current session.

29. Mr. PARTSCH said that the same problem arose with regard to France. The French report had provided very little information on the dependent territory of New Caledonia, although the representative of France had given additional details in his oral statement. He reminded members that the Working Group on Dependent Territories considered information on those territories contained in the reports submitted under article 9 by the States which were the Administering Authorities. That had become the Committee's established practice and he contested Mr. Banton's view that it was inconsistent. He stressed that note was taken of all information on dependent territories provided by Administering Authorities.

30. Mr. SHERIFIS fully endorsed Mr. Partsch's comments. A few days previously, he had attended a meeting of the Working Group on New Caledonia, which had examined the report of France, submitted under article 9, in order to obtain information relating to article 15, paragraph 2 (a) of the Convention.

31. The CHAIRMAN suggested that consideration of the matter should be deferred until the following year, thereby enabling members to familiarize themselves with the topic and to propose appropriate wording for the paragraph.

It was so decided.

32. Mr. BANTON said that the Committee's report should refer to the question of reporting on dependent territories. He hoped that a number of papers would be circulated before the subject was re-examined by the Committee and that specific proposals, accompanied by relevant explanatory documents, would be submitted. If the Committee decided to endorse Mr. Partsch's view, the relevant paragraph should be inserted in chapter 3, probably after paragraph 129. The discussion had illustrated the value of a regular review of the Committee's practice in all areas.

33. It would be useful if the Secretariat could provide figures for the number of non-self-governing territories in 1970 and 1989 respectively for insertion after paragraph 179.

34. The CHAIRMAN said that proposals relating to reporting procedures under article 15 should be submitted to the Secretariat, which could provide documentation on past disputes to assist them in forming opinions. It would also provide the figures for non-self-governing territories requested by Mr. Banton.

New paragraph 199A

35. Mr. BANTON proposed that the following new paragraph 199A should be inserted after the existing paragraph 199:

> "Article 10 (3) declares that the secretariat of the Committee shall be provided by the Secretary-General of the United Nations. Article 8 (6) declares that States parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties. This dual system of financing recognizes the special responsibilities of those States which have chosen to ratify the Convention. Their contributions are assessed according to a United Nations scale which takes account of differences in national wealth. Some States have failed to pay their assessments. Many of those who have failed have also been States which have not met their reporting obligations. Up to the end of 1985 the Secretary-General made good from United Nations funds the shortfall in the Committee's income so that it could continue to meet twice a year for three-week sessions. From 1986 onwards the Secretary-General was not prepared to continue doing so. As a result the sessions which would normally have been held in August 1986 was cancelled, and the August session reduced to two weeks. Appeals to the States parties and to the Secretary-General resulted in the reduction of arrears of payment but not enough to prevent the cancellation of the March 1988 and the reduction to one week of the August session. At that session the Committee took a decision asking the General Assembly to note the relatively low cost of enabling the Committee to continue its work and to authorize the Secretary-General on a temporary basis, to ensure the financing due under article 8 (6)."

36. He thought the new text would help to make readers aware of the mechanisms of the Committee's work and to clarify its dual system of financing.

37. Mr. YUTZIS said that he supported Mr. Banton's text in principle, but proposed that the word "recognizes" in the third sentence of the paragraph should be replaced by "establishes" and that, in the ninth sentence, the word "cancelled" should be followed by the words "thus making it impossible for the Committee to submit its report to the General Assembly". That was an extremely important fact, which should be strongly emphasized.

38. Mr. GARVALOV supported Mr. Banton's proposal, as amended by Mr. Yutzis. The last sentence in the proposed new paragraph should be updated to take account of decisions adopted at the 1988 and 1989 sessions.

39. The CHAIRMAN said that a sentence stating that decisions on the matter had also been taken during the thirty-sixth and thirty-seventh sessions could be added to the paragraph.

40. Mr. BANTON said that he accepted the suggestions by Mr. Yutzis and Mr. Garvalov. He added that "1987" should be inserted after the word "August" in the penultimate sentence.

41. Mr. SHERIFIS said that he supported the proposed new paragraph and the proposed amendments.

42. Mr. FERRERO COSTA thought that the reference in the third sentence to "States which have chosen to ratify the Convention" was rather weak. He therefore proposed that the phrase should be amended to read: "States parties to the Convention" or "States ratifying the Convention". Furthermore, in his view, the proposal by Mr. Yutzis to mention the fact that the Committee had been unable to present its report to the General Assembly in 1986 might lead to some misunderstanding. In his opinion, it should also be stated that, despite its financial problems, the Committee had been able to submit its report in 1987, in order to avoid giving the impression that no reports had been submitted since 1986.

43. Mr. YUTZIS said that he disagreed. It was normal for the Committee to submit a report and it was important to emphasize the abnormality of its failure to do so. In his opinion, a statement that the Committee had submitted a report in 1987 would detract from the overall impact of the paragraph.

44. Mr. FERRERO COSTA said that, although he did not wish to enter into a discussion with Mr. Yutzis, it should be remembered that the study under consideration was a permanent document on the work of the Committee. The emphasis should not be on the financial crisis, but on the fact that the Committee submitted annual reports to the General Assembly. If it were stated that no report had been submitted in 1986, there should also be a statement specifying when reports had been submitted.

45. The CHAIRMAN suggested that, in the light of the exchange of views in the Committee, a decision on the proposed new paragraph 199A should be left in abeyance, pending a rewording of the text, with the inclusion of the appropriate dates. (See paras. 56 and 57 below.)

It was so decided.

Paragraph 200

46. Mr. BANTON proposed that paragraph 200 should be reworded as follows: "By the end of 1989, 128 States, more than three quarters of the membership of the United Nations, had ratified the Convention, making it the most widely ratified as well as the oldest of all the United Nations human rights conventions. This figure testifies to the wave of international revulsion against the evil of racial discrimination and to the recognition of the importance of legal measures of prevention." It was understood that the figures given in the first line might be changed in the future to take account of further ratifications.

It was so decided.

Paragraph 200, as amended, was adopted.

Paragraph 201

47. Mr. BANTON said that paragraph 201 was a very important one as it came under the section on achievements. He therefore proposed that the existing

paragraph should be redrafted, with the introduction of small letters to draw attention to distinct achievements in the implementation of the Convention. He proposed the following wording:

> "The first phase in human rights legislation has to be one of standard-setting. The International Convention specifies what a State has to do if it is to demonstrate a commitment to the struggle against racial discrimination. Many States have responded in a very positive manner: (a) some national constitutions have been amended in order to incorporate provisions prohibiting racial discrimination; (b) States parties have undertaken systematic reviews of their legislation to amend any laws or regulations which have the effect of perpetuating racial discrimination, or to enact new legislation to satisfy the requirements of the Convention, in accordance with article 2, paragraph 1 (c) and (d); (c) some States have amended their legislation at the suggestion of the Committee; for example, one State repealed a law which stipulated that a person must understand the national language in order to be entered on the electoral roll; (d) some States have added new provisions to their penal legislation, making racial discrimination a punishable offence, or have amplified previous legislation; (e) numerous States (perhaps half those which are parties to the Convention) have enacted new laws designed to bring their legal norms into conformity with the provisions of article 4 (a) and (b) of the Convention; (f) some States have enacted new legislation to give effect to the provisions of various sections of article 5 and pressure has been applied to many States to get them to attend to the standards specified in this important article; (g) some States parties have initiated educational programmes in accordance with article 7; (h) some States have established new administrative agencies or new offices to deal with the problems of racial discrimination and to protect the interests of indigenous groups; (i) in many cases such concrete measures have been taken partly in order to permit the States to mention them in their reports; (j) progress in the implementation of other provisions of the Convention has also been reported to the Committee".

48. In his proposed draft, sections (a), (b), (g), (h) and (j) were the same as in the original text. In section (e), "a few States" had been changed to "numerous States" and the statement in parentheses had been added on the strength of a rough estimate provided by Mr. Partsch, which explained the use of the word "perhaps". In section (f), "a few States" had been changed to "some States", which suggested a slightly larger number. The statement in section (i) was new and had been included at Mr. Partsch's suggestion.

49. Mr. ABOUL-NASR, referring to the statement in section (j), wished to know by whom progress had been reported to the Committee.

50. The CHAIRMAN specified that progress had been reported by some States parties.

51. Mr. FERRERO COSTA thought that it was not advisable to use a word like "perhaps" in a document of that nature, and suggested that it should be deleted from the statement in section (e), and that the word "numerous" should be changed to "several", since the Committee was unable to give a precise figure.

52. Mr. PARTSCH said that he appreciated Mr. Ferrero Costa's objection and proposed that the word "about" should be substituted for "perhaps".

53. In reply to a comment by Mr. SHAHI on the precise meaning of the word "several", Mr. BANTON pointed out that it was extremely difficult to give an exact figure, as the number of States Parties enacting new laws was constantly growing.

54. The CHAIRMAN said he took it that the Committee agreed to the wording proposed by Mr. Banton, keeping the word "numerous" in the statement in section (e) and replacing the word "perhaps" by "about".

It was so decided.

Paragraph 201, as amended, was adopted.

New paragraph 203A

55. Mr. BANTON suggested that a new paragraph 203A should be added, worded as follows:

> "The procedure whereby the Committee reports annually, through the Secretary-General, to the General Assembly, has built an institutional structure whereby the problem of racial discrimination is kept on the international agenda. The report is discussed in the Third (Social, Humanitarian and Cultural) Committee and then in the General Assembly on that Committee's resolution. It is considered by all United Nations Member States and not just those which are parties to the Convention. A specialized vocabulary has been developed for analysing problems and describing policies. Considering the linguistic and cultural diversity of the many peoples represented, this is of considerable significance and marks a great advance over the position prior to the adoption of the Convention in 1965."

It was so decided.

New paragraph 203A was adopted.

New paragraph 199A (continued)

56. Mr. FERRERO COSTA said that, with the inclusion of new paragraph 203A proposed by Mr. Banton regarding the Committee's annual reporting procedure, he was able to withdraw his reservations concerning paragraph 199A.

57. The CHAIRMAN said he understood that the Committee could accordingly adopt proposed new paragraph 199A, subject to the insertion by the Secretariat of the correct dates.

It was so decided.

New paragraph 199A was adopted, subject to the insertion of the appropriate dates.

New paragraph 203B

58. Mr. BANTON proposed the insertion of a new paragraph 203B to read:

> "The second phase in human rights legislation has to be that of improving methods of enforcement. Some States are understandably preoccupied with major problems of national security, subsistence, development, internal conflict, and the like. It is to be hoped that they, as well as States that are more fortunately placed, will, by their dialogue with the Committee, come to give higher priority to the prevention of racial discrimination than they would otherwise have done. It is also to be hoped that many more will be willing to manifest their concern by making the declaration under article 14 since this provision at present offers the best opportunity for the Committee to progress beyond its responsibilities for standard-setting."

59. Mr. SHERIFIS said he supported the proposed paragraph, but suggested a minor change to the last sentence, to reflect the fact that the Committee had repeatedly urged Member States to consider the possibility of making the declaration under article 14 of the Convention. The amended sentence would thus begin: "The Committee has urged that many more States will manifest their concern ...", the rest of the sentence remaining unchanged.

60. Mr. PARTSCH reminded the Committee that when the original text had been drafted, there had been some doubts as to whether it was the Committee's role to make a positive statement in favour of States making the declaration under article 14, since that was a sovereign decision by States. Although the Committee's position had changed somewhat in the meantime, it continued to be somewhat cautious in asking States parties whether they intended to make that declaration. He therefore thought it preferable to retain the wording proposed by Mr. Banton.

61. Mr. ABOUL-NASR said that the problem of external debt should be included in the major problems listed in the second sentence of the proposed new paragraph.

62. He disagreed with the apparent link established between States making the declaration under article 14 and the manifestation of concern by Member States. Those making the declaration were not the only ones to show their concern for the implementation of the Convention.

63. Mr. YUTZIS agreed that some mention should be made of article 14, but thought that it should be expressed in different terms. He proposed that the final sentence of the text proposed by Mr. Banton should read: "It should be pointed out that progress has also been made in the implementation of article 14 of the Convention, namely: (a) the number of States that have made the declaration under article 14 has increased; and (b) during the 1988 session of the Committee, consideration of the first case submitted under this article was concluded. It is also to be hoped that the countries that have not made the declaration under article 14 will be willing to manifest their concern by making this declaration, since this provision at present offers the best opportunity for the Committee to progress beyond its responsibilities for standard-setting."

64. The CHAIRMAN said that such a proposal would alter the whole thrust of paragraph 203B, which, as it stood, was to be read in conjunction with paragraph 203A. It was not merely a statement of fact, but an expression of expectation or hope in a new era of human rights legislation.

65. Mr. GARVALOV suggested that, in order to link the first and second sentences of the proposed text, the words "than they would otherwise have done" in the third sentence should be replaced by "in the solution of their major problems".

66. Referring to the expectation that many more States would make the declaration under article 14 and to Mr. Partsch's comment on the prerogative of States parties in that regard, he drew attention to the fact that the General Assembly, in adopting a resolution each year on the status of implementation of the Convention, had never asked States parties to do anything more than to consider making that declaration. The statement in the proposed amendment should therefore be made more consistent with the General Assembly's position on the matter.

67. The statement that the provision under article 14 offered the best opportunity for the Commission to progress beyond its responsibilities for standard-setting might be seen as an attempt to endow the Committee with responsibilities exceeding its mandate under the Convention. It could also be construed as inferring that the Committee had not been performing its standard-setting duties because of the provisions under article 14.

68. Mr. FERRERO COSTA said he supported Mr. Yutzis' proposal that a reference should be included to the two areas of progress. Those points should appear somewhere in section C on achievements. A clear distinction had to be drawn between achievements and hopes for the future and the last sentence of Mr. Banton's text belonged to section D, on hopes for the future. However, like Mr. Garvalov, he doubted the suitability of the phrase "to progress beyond its responsibilities for standard-setting" in that sentence. In the second sentence of Mr. Banton's text an inappropriate distinction seemed to have been drawn between two categories of States.

69. Mr. ABOUL-NASR said that he had two difficulties with the last sentence of the new paragraph. First, it should properly be included in section D since it began with the words "It is also to be hoped". Secondly, declarations under article 14 should be welcomed without pronouncing on the conduct of States by saying they had shown concern, since ratifying the Convention was itself evidence of concern.

70. Mr. SHAHI agreed that the expression of hope concerning article 14 should be included in section D, not section C. He did not think that, in expressing the hope that more States would make a declaration under that article, the Committee would be going beyond its legitimate sphere.

71. Mr. YUTZIS said he had four points to make. First, the study should reflect all the progress that had been achieved and therefore had to describe the progress made in regard to the application of article 14: the greater number of States that had made a declaration and the fact that the Committee had concluded its analysis of the first case submitted to it under that article. Secondly, he agreed with the Chairman that those two points would have to be inserted elsewhere, at a place to be determined by Mr. Banton or the Secretariat. Thirdly, he recalled that, during the consideration of

periodic reports, State representatives had often been asked whether their country was prepared to withdraw its reservation with regard to article 14 and the Committee's right to ask that question had never been challenged. There was thus a certain consensus that that question could be asked of States. In voicing its hope, the Committee was not only expressing a wish for the future but confirming a trend that had emerged in its own practice. Fourthly, he thought that the wording of the last sentence of Mr. Banton's proposed new paragraph needed amendment, since, in his view, the provisions of article 14 did not offer the best opportunity for the Committee to go beyond its responsibilties for standard-setting.

72. Mr. BANTON proposed, in order to meet the wishes expressed by Committee members, that a new paragraph on article 14 should be inserted after paragraph 203. His proposed new paragraph 203A would conclude section C on achievements, and his proposed new paragraph 203B would be the first paragraph in section D on hopes for the future. He was prepared to accept Mr. Aboul-Nasr's suggestion that the word "welcome" should be used instead of "hope" with regard to declarations under article 14, provided that the reason was indicated, namely, that they enabled the Committee to pass from standard-setting to implementation.

73. Finally, in reply to Mr. Ferrero Costa's comment on the second sentence of his text he said he believed that when the Committee examined periodic reports, it showed an understanding of the appalling problems which some States faced. The wording he had used had been intended to show that the Committee was not differentiating between two kinds of States, but made allowance for special difficulties.

74. Mr. PARTSCH agreed with Mr. Banton's proposal. He could not, however, accept Mr. Garvalov's proposal that the words "than they would otherwise have done" should be replaced by the words "in the solution of their major problems" in the third sentence of paragraph 203B.

75. He stressed that the examination of one complaint in four years should not be described as a success. It was therefore better not to mention specific cases.

76. The CHAIRMAN suggested that the new paragraph 203B proposed by Mr. Banton should be redrafted, taking into consideration the ideas expressed by members of the Committee. The new version of the paragraph could be considered by the Committee at its next session.

It was so decided.

Paragraph 204

77. The CHAIRMAN read out paràgraph 204 as amended by Mr. Banton, which read: "As it looks to the future after its first 20 years, the Committee hopes that the many recent tragedies stemming from racial and ethnic conflict in various regions of the world will make people everywhere the more determined to maintain the commitment which has made possible the progress so far recorded". He took it that that text was acceptable to the Committee.

It was so decided.

Paragraph 204, as amended, was adopted.

Paragraph 205

78. Mr. BANTON proposed that the second sentence of section (a) should be amended to read "in at least four areas". The first of those areas would be defined in the present subparagraph (a) (i) relating to article 4; the second area would be defined in a new subparagraph relating to article 5, reading: "Legislative action to give effect to the requirements of article 5 (a) to (f) in conjunction with action taken in accordance with the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights with its Optional Protocol"; the third area would be defined in another new subparagraph, reading: "Legislative action to give effect to article 6 defining the remedies and reparation available to victims in their national legal order"; and the fourth area would be defined in the existing subparagrah (a) (ii). Articles 4, 5, 6 and 7 would thus be treated in numerical order.

It was so decided.

Paragraph 205, as amended, was adopted.

Paragraph 206

79. The CHAIRMAN said it was self-evident that the situation had changed and that Mr. Banton was right to suggest that the third sentence should end with the words "in successive resolutions".

80. Mr. ABOUL-NASR said that, in view of the large number of casualties still occurring in racial wars, some reference should be retained to the goal of universality of ratification or accession.

81. The CHAIRMAN agreed that Mr. Aboul-Nasr had made a valid point and suggested that the paragraph should be reformulated to take it ito account.

It was so decided.

82. The CHAIRMAN said that the first reading of the revision of the study had been concluded. The amended document and its annexes would be reproduced and circulated to members of the Committee with a view to a decision being taken at its next session.

The meeting rose at 12.40 p.m.

858th meeting

Monday, 28 August 1989
at 4.20 p.m.

Chairman: Mr. LAMPTEY

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 7) (*continued*)

Celebration of the twentieth anniversary of CERD in 1990

1. The CHAIRMAN submitted to the Committee a list of suggestions for the celebration of CERD's twentieth anniversary set out in a document issued without a symbol. His suggestions were the following:

(*a*) The Committee might wish to consider holding its commemorative session in New York (site of its first meeting) in the spring of 1990 to coincide with the annual celebration of the International Day for the Elimination of Racial Discrimination;

(*b*) The Committee might in the event use the greater part of the session for its normal work, and then allocate a limited number of meetings to a round-table evaluation of the Committee's work in the first two decades and ideas for future work. It was suggested that all past Chairmen of the Committee should be invited on that occasion. The culmination of the commemoration would be the attendance of the entire Committee together with the previous Chairmen at the celebration of the International Day for the Elimination of Racial Discrimination;

(*c*) States parties' representatives should be invited for the commemorative meetings, together with representatives of non-governmental organizations with a special interest in racial discrimination, of UNESCO and of ILO;

(*d*) Liaison should be established with the information service of the United Nations to ensure extensive media representation and coverage of the commemoration;

(*e*) The views exchanged and ideas developed in the course of the meetings should form the basis of a pamphlet to be issued by the Centre for Human Rights for world-wide publicity.

2. Mr. ABOUL NASR expressed great interest in the Chairman's suggestions. However, the first one should not convey the impression that the choice of New York was something exceptional; the Committee should hold all its sessions in that city. As for the second suggestion, he pointed out that the Committee would be meeting at a time when the United Nations and the entire world would be celebrating the International Day for the Elimination of Racial Discrimination, which each year commemorated the Sharpeville massacre on 21 March. Consideration might be given to widening the appeal of the commemoration by calling upon famous artists, as had been done on 26 August in Paris to celebrate the bicentenary of the French Declaration of the Rights of Man and of the Citizen. For example, Harry Belafonte and Myriam Makeba could perhaps be approached. The proceeds of the concert could be devoted to the victims of racial discrimination.

3. Regarding the third suggestion, a letter could be sent out to the States Members of the United Nations on the occasion of the commemoration of the Sharpeville massacre, to which many countries - including his own, Egypt - attached great importance, in order to draw attention to CERD and its activities over the past two decades. A letter could also be sent to the former members of the Committee and to the Chairman of the Third Committee of the General Assembly. Lastly, reverting to the second suggestion made by the Chairman, he pointed out that the financial implications of an invitation to all the former chairmen of the Committee to attend the twentieth anniversary celebration would have to be considered.

4. Mr. SONG SHUHUA also found the Chairman's list of suggestions interesting and comprehensive. The dissemination of a pamphlet, as provided for in the fifth suggestion, would be particularly useful. He supported Mr. Aboul Nasr's proposal that a letter should be sent to former members of the Committee. Furthermore, the spring commemorative session should be regarded as an opportunity to make progress towards the solution of the Committee's financial problems, in order to ensure that the autumn session could be held. Finally, like Mr. Aboul-Nasr, he felt that the financial implications of an invitation to the former chairmen of the Committee should be examined.

5. Mr. PARTSCH, associating himself with the observations made by Mr. Aboul-Nasr and Mr. Song Shuhua suggested that the representative of the Secretary-General should be requested to provide information on the financial implications of the Chairman's suggestions.

6. The CHAIRMAN replied that the representative of the Secretary-General would specify the financial implications after the Committee had examined the suggestions submitted to it, but before it took a decision on them. As had been stated by Mr. Song Shuhua, the celebration of the twentieth anniversary of CERD should help to give States parties, non-governmental organizations, etc. a better understanding of the problems confronting the Committee.

7. Mr. SHAHI also felt that many of the Chairman's suggestions were constructive. However, certain ideas required further elaboration and the Committee must make sure there were no financial obstacles.

8. Mrs. SADIQ ALI requested that the twentieth anniversary of CERD should also be used as an opportunity to focus on information in the States parties. In India, her own country, very few people had ever heard of the International Convention on the Elimination of All Forms of Racial Discrimination; the same surely applied to many other countries. An effort must therefore be made to step up information in the States parties, for promoting public awareness of the importance of its activities, was part of the Committee's programme of work.

9. Mr. FERRERO COSTA also considered the Chairman's suggestions to be useful. However, should the invitation to former chairmen prove too costly, it might be preferable to concentrate on other priorities. The emphasis that Mrs. Sadiq Ali had laid on information in the States parties was essential. The Committee could co-operate with the information service in that respect. The publicity in question should be directed at all Member States, not only the States parties. It might also be useful to organize a symposium on problems of racial discrimination, with the participation of members of the teaching profession, representatives of non-governmental organizations, etc.

10. Mr. SHERIFIS proposed that the suggestion submitted and seconded regarding information in the States parties should be expressed formally by adding a subparagraph (f) as follows:

> "(f) The States parties to the Convention should be invited to give the broadest possible publicity to the activities of the Committee and to the principles and objectives of the Convention."

Co-operation with the information service of the United Nations could be undertaken on that basis; articles could be written by members of the Committee, by prominent persons from various countries and, in some countries, possibly by heads of State themselves.

11. Mr. YUTZIS, referring to the fifth suggestion made by the Chairman, proposed that a pamphlet on CERD should be prepared, entitled "Twenty Years of Struggle against Racism". The preparation of the pamphlet should be discussed with the Secretariat. The symposium proposed by Mr. Ferrero Costa could focus on present manifestations and new forms of racism. Invitations to attend the symposium could also be extended by Mr. Asbjörn Eide, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on racial discrimination, to a person representing UNESCO and to one representing the non-governmental organizations. The symposium, which could last one, two or three days, would in his view be preferable to an invitation to the former Chairmen of the Committee; since there were financial implications, it would also be a better way of spending the funds.

12. Mr. BANTON supported the observations made by Mr. Yutzis. With reference to the fifth suggestion, he remarked that the views exchanged in the course of a meeting were not necessarily suitable material for drafting a pamphlet. Careful planning would therefore be required to put that suggestion into effect. The primary objective of the publicity envisaged was universal ratification of the Convention. Accordingly, the main target must be the States that had not yet ratified that instrument. A pamphlet of that nature could focus on striking examples such as cases, mentioned during the consideration of reports, in which compensation had been paid to the victims of racial discrimination. In general, the fifth suggestion called for a careful study of the most effective means of reaching public opinion and the States.

13. The CHAIRMAN thanked the members of the Committee for the proposals they had submitted to supplement his own suggestions for the celebration of the twentieth anniversary of the Committee.

14. Regarding the financial implications, he believed that any activities organized on the occasion of the celebration could be financed from the resources allocated to the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination. The proposals put forward by Mr. Ferrero Costa, Mr. Yutzis and Mr. Banton were interesting, but he wondered whether they were fully in line with the aim that the Committee had set itself. His proposal to invite former Chairmen of the Committee had been prompted first by the hope that significant results would be achieved on that occasion, such as a solution to the Committee's financial problems, and secondly by the feeling that it was now time, after 20 years, to evaluate the work done by the Committee and consider ideas for its future activities. Who could be better qualified for that task than those who had chaired the

Committee in its early years, particularly Mr. Dayal, its first Chairman? All the former Chairmen, including Messrs. Haastrup, Bahnev, Kapteyn, Valencia Rodriguez, Ingles and Cremona, had written books and helped to publicize CERD. The attendance of such distinguished persons, who were still genuinely influential, would enhance the prestige that should rightly attach to the celebration of the twentieth anniversary of the Committee.

15. He supported the idea of widely publicizing the work of the Committee in the States parties to the Convention. The idea was not new. It had already been suggested in 1988, during the consideration of the report of a State party, that public attention in that State should be drawn to the Committee's conclusions on the report. He therefore supported the proposal made by Mr. Sherifis on that subject.

16. Regarding the proposal made by Mr. Yutzis, who considered that it would be useful to prepare a short pamphlet entitled "Twenty Years of Struggle against Racism", he pointed out that the revised version on which the Committee was currently working (CERD/1) would itself constitute a new document highlighting the achievements of the Committee. It would, of course, be possible to draft an article bearing the title suggested by Mr. Yutzis, but it would not be up to the Committee to do so. Mr. Banton had already prepared a document on the subject. If Mr. Yutzis or anyone else volunteered, that person could use Mr. Banton's document as a basis for drafting an article which could then be widely disseminated at the time of the celebration of the twentieth anniversary.

17. As for the proposal to hold an international symposium, he did not think it was of direct interest to the Committee. The holding of a symposium and a commemorative ceremony were entirely different matters. If a symposium was to be organized on the occasion of the celebration of the twentieth anniversary of CERD, it would be more appropriate for the Centre for Human Rights to do so.

18. Lastly, regarding the proposal made by Mr. Aboul-Nasr to the effect that letters should be sent out to the most senior members of the Committee drawing their attention to the planned celebration and paying tribute to the part they had played in the past, or that the Committee should call upon artists to take part in the celebration, he had no actual objection to them but found it hard to see who could undertake to carry them out.

19. Mr. SHAHI thanked the Chairman for his summing-up of the situation. He agreed that an international symposium was a different matter, but he did think that it would be a good idea to organize a round table attended by persons thoroughly familiar with the work of the Committee, as had been proposed by the Chairman. As for the proposed symposium of members of the teaching profession and other intellectuals, he felt that, while it might be interesting in some respects, it would be of no practical use to the Committee, whose activities must remain within the scope of the Convention. The participants in such a symposium might make proposals that were perfectly worth while but outside the sphere of competence of the Committee, which would consequently be unable to act on them. However, the Committee's membership included learned and experienced persons who were fully aware of the limits imposed by the Convention; the round table proposed by the Chairman might therefore prove very useful, and further consideration should be given to that idea. Regarding the publicity that should be given to the activities of the

Committee in the States parties to the Convention, Mr. Banton's document could indeed serve as the basis for an article that could be widely disseminated, and Mr. Yutzis appeared to be particularly well qualified to write such an article.

20. In conclusion, the ideas put forward by the Chairman and the proposals made by certain members of the Committee should provide a basis for the preparation of the celebration of the twentieth anniversary of the Committee.

21. Mr. FERRERO COSTA considered the question of financial implications to be fundamental and therefore requested the representative of the Secretariat to provide information on that matter and on the funds available.

22. The CHAIRMAN pointed out that the Secretariat was probably not in a position to reply to those questions immediately. The members of the Committee must first of all agree on what was to be done. The matter must be settled one way or another as a matter of urgency, because a decision must go down in the report, and although the Committee did not know the financial implications it could still reach a conclusion on what it wished to do.

23. Mr. HOUSHMAND (Representative of the Secretary-General) said he was not in a position to indicate the precise financial implications of the five proposals put forward by the Chairman for the commemoration of the twentieth anniversary of the Committee, but could already point out certain administrative implications.

24. The first proposal, namely to request that the session at which the commemoration was to take place should be held at headquarters in New York, would have to be approved by the States Parties to the Convention, which at their last meeting, had decided for economy's sake to hold all the Committee's sessions at Geneva, where its Secretariat was based. The proposal would have to be submitted to them at their next session, scheduled for 16 January 1990 in New York. Furthermore, it must be borne in mind that if the financial situation of the Committee failed to improve, it might not be able to meet in the spring of 1990. If the meeting could be held, it would have to be approved by the Department of Conference Services at Headquarters, for the schedule of meetings of the various United Nations bodies had already been drawn up. Lastly, the financing of the activities envisaged for the commemoration of the twentieth anniversary from the resources allocated to the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination, as suggested by a member of the Committee, would have to be approved by the General Assembly.

25. Regarding the proposal to invite the eight former Chairmen of the Committee, their travel costs and subsistence allowances would have to be charged to the budget of the Committee. However, the publication of a document outlining the activities to be organized on the occasion of the anniversary should not be a problem. The idea of convening a symposium of intellectuals could be submitted to the Advisory Services and Technical Co-operation section, which could then take it into account in planning the activities to be undertaken in 1990.

26. He would be supplying more detailed information before the end of the session.

27. Mr. ABOUL-NASR said that the prospects described by the representative of the Secretary-General were not very encouraging. It appeared that the Committee could not take any decision, as most of the proposals put forward had financial implications.

28. He wondered whether it might not be preferable to change the title given to the celebration of the twentieth anniversary of the establishment of the Committee so as to make the idea sound more convincing to the General Assembly; he proposed the celebration of "20 years of activity of the Committee".

29. The CHAIRMAN replied that, whatever the Committee agreed upon, the final decision would still have to be taken by the General Assembly. Even if the Committee were convinced that all conditions had been met for it to celebrate the anniversary of its establishment or its 20 years of activity, it would be for the General Assembly to settle the matter. The fact remained that the Committee could and must submit proposals. Strictly speaking, the Committee was not a United Nations body since it was financed by contributions from the States parties to the Convention; but the General Assembly had always acknowledged the importance of its role in furthering the objectives of the Decade to Combat Racism and Racial Discrimination. The celebration of the twentieth anniversary of the Committee or of its 20 years of activity could not but be considered a useful contribution to the Second Decade to Combat Racism and Racial Discrimination, and the General Assembly would no doubt appreciate that point.

30. At any rate, the Committee could not take a decision at the present meeting, not because of the financial and administrative implications that its proposals might have, but simply because it did not have a quorum. In that connection he pointed out that it was absolutely essential that members should attend until the end of the session, because the Committee would be unable to adopt its report if it did not have a quorum.

31. In reply to comments by several members of the Committee, he stressed that, although every member obviously had time constraints or a tight schedule, all of them, in becoming members of the Committee, had undertaken to perform their task to the best of their ability and must therefore organize their schedule in consideration of the dates of the Committee's sessions.

32. The Committee traditionally closed its sessions at the morning meeting on the last day. It would not be possible to adopt the report earlier than that, because parts of it had yet to be drafted and several chapters to be translated.

33. Mr. SHAHI was convinced that all the members of the Committee were anxious to be co-operative; he personally would make the necessary arrangements to attend until the end of the session. However, he wondered whether the Committee could not proceed with the consideration of those sections of the report that had already been finalized, even if they were not available in all the languages.

34. Mr. ABOUL-NASR asked whether his colleagues from Latin America and Mr. Song Shuhua would consent to the Committee's examining the report in English, considering that the French and Russian members were absent.

35. Mr. HOUSHMAND (Representative of the Secretary-General) said that the Secretariat had requested that the parts of the report available should be translated into Spanish as a matter of priority. Their translation should be well under way but, considering that the Committee had not completed its consideration of all the items on its agenda, he did not see how the report could possibly be finalized before the last meeting. The chapters already available would be submitted at the next meeting to enable the Committee to examine them as soon as possible.

36. Mr. SHERIFIS wondered whether the Committee should not take a decision regarding the celebration of its twentieth anniversary.

37. The CHAIRMAN replied that all the ideas expressed in the course of the meeting, including those put forward by Mr. Sherifis, would be consolidated and put into formal wording by the Secretariat, which would then submit a revised proposal. As soon as the Committee had been informed of all the administrative and financial implications of the proposal, it would be in a position to take a decision.

38. Also in connection with the Second Decade to Combat Racism and Racial Discrimination, he invited the members of the Committee to examine the note by the Secretary-General on the global consultation on racism and racial discrimination (E/1989/48). They could submit their observations or suggestions on the conclusions in section VII of that document, but the Committee could already consider that it had made its contribution to the programme of action for the Second Decade in the form of the revision of the study on the progress made towards the achievement of the objectives of the Convention (CERD/1), and through the activities it would be organizing to celebrate its twentieth anniversary. Of course, the members were free to propose other ways of contributing.

39. Before the end of the session, the Committee would also have to designate the members to be entrusted with the preparatory work for the reviews of periodic reports of States parties scheduled for its coming sessions.

The meeting rose at 5.50 p.m.

859th meeting

Tuesday, 29 August 1989
at 10.20 a.m.

Chairman: Mr. LAMPTEY

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 7) (concluded)

Celebration of the twentieth anniversary of CERD in 1990 (concluded)

1. The CHAIRMAN invited members to consider adopting a decision on the proposal for commemoration of the Committee's twentieth anniversary, drafted on the following lines:

> "The Committee decided, subject to the availability of funds and the approval of the General Assembly:
>
> "(a) To hold a commemorative session in New York (site of its first meeting) in the spring of 1990, to coincide with the annual commemoration of the International Day for the Elimination of Racial Discrimination (21 March 1990), which will also be the thirtieth anniversary of the Sharpeville massacre;
>
> "(b) To utilize the greater part of the session for its normal work, and then allocate a limited number of meetings to a round-table evaluation of the Committee's work in the first two decades and ideas for future work. For this occasion it is proposed to invite all past chairmen of the Committee. The culmination of the commemoration would be the attendance by the entire Committee with the past chairmen at the commemoration of the International Day for the Elimination of Racial Discrimination;
>
> "(c) To invite State parties' representatives for the commemorative meetings, as well as those non-governmental organizations with a special interest in racial discrimination, UNESCO and the ILO;
>
> "(d) To invite States parties to the Convention to give the widest possible publicity to the work of CERD and to the principles and objectives of the Convention during this period.
>
> "(e) To establish liaison with the Department of Public Information of the United Nations to ensure massive media representation and coverage of the commemoration.
>
> "(f) To use the views exchanged and ideas developed in the course of the meetings as the basis of a pamphlet to be issued by the Centre for Human Rights for world-wide publicity."

2. Mr. ABOUL-NASR proposed that the words "in conformity with article 10, paragraph 4, of the Convention" should be inserted after the words "(site of its first meeting)" in subparagraph (a).

3. Mr. BANTON proposed that the words "and to work for universal ratification of the Convention" should be added after the word "period" in subparagraph (d).

4. Mr. BESHIR suggested that OAU should be invited to attend the commemorative session.

5. Mr. GARVALOV said the Committee should be aware that, on 21 March each year, the Special Committee against *Apartheid* usually convened two solemn meetings to commemorate the International Day for the Elimination of Racial Discrimination, and that on the thirtieth anniversary of the Sharpeville massacre those commemorative meetings would be much better attended than usual. The Committee's celebration would thus risk being merged in that other commemoration. With regard to OAU, that organization had observer status and its representative would obviously attend the Committee's meetings.

6. The CHAIRMAN said he was very much aware of the commemoration of the International Day for the Elimination of Racial Discrimination, an annual event at which the Committee was always represented, normally by the Chairman. To give the Day more impact, the entire Committee would attend the ceremony. If the Committee's decision was endorsed by the General Assembly, contact would be made with the Special Committee against *Apartheid* to see how it could best make its presence felt.

7. Mr. HOUSHMAND (Representative of the Secretary-General) reminded the Committee that, under rule 25 of its rules of procedure, the Secretariat was required to inform the Committee of the administrative and financial implications of any decision it adopted. He had therefore requested the Secretariat to make a rough calculation of the cost of a session in New York, as compared with the normal cost of a session in Geneva, on the assumption that the proposed session in New York would be for three weeks, that the dates would be modified to coincide with the commemoration on 21 March 1990, and that eight former chairmen would be present for the three-week session. Including the cost of travel and per diem for staff members who would have to travel from Geneva to New York to service the three-week session, the total cost would be $247,600. If the same session were held in Geneva with the participation of former chairmen, the total cost would be $130,000. The additional cost would thus be $117,600. That figure did not include the difference in the cost of conference service facilities, but the Secretariat assumed that, on approval of the proposal by the General Assembly, the Office of Conference Services would be able to provide the Committee with the same services in New York as it did in Geneva.

8. The CHAIRMAN suggested the Committee should decide that, subject to the availability of funds and the approval of the General Assembly, the proposal for the commemorative session should be adopted, taking into account the changes that had been proposed by Mr. Aboul-Nasr and Mr. Banton.

It was so decided.

Global consultation on racism and racial discrimination (E/1989/48)

9. Mr. BANTON observed that, in the letter from the Minister of Foreign Affairs of the Netherlands which the Committee had before it in connection with agenda item 2 (b) (A/C.3/43/5), reference had been made to the great stress being placed on the staff and equipment of the Centre for Human Rights in Geneva. He suggested that the Committee might take the opportunity to express its concern at that situation.

10. The CHAIRMAN said that although the matter was not related to the Decade, the summary records could reflect the fact that the whole Committee shared that sentiment. What the Committee could do was to endorse the conclusions and suggestions in paragraph 60 of the report on the global consultation (E/1989/48, annex) which were in line with its own ideas.

11. Mr. BANTON pointed out that there was a reference to the Centre for Human Rights in paragraph 60 (g). Paragraph 60 (a) suggested that racism and racial discrimination should be referred to as a crime under international law, whereas the Committee had been discussing with States parties the use of civil remedies for racial discrimination. It would be regrettable if legal action against all kinds of racial discrimination were associated with criminal law: some aspects were better dealt with by civil remedies.

12. Mr. ABOUL-NASR pointed out that the Committee could not endorse the conclusions of the global consultation and at the same time propose an amendment. He suggested taking note of Mr. Banton's comment and endorsing the conclusions as they stood.

13. Mr. SHERIFIS agreed with Mr. Aboul-Nasr. He also called attention to the fact that, in the conclusions of the global consultation, (paragraph 60 (k)), it was recommended that the General Assembly should look into the future financing of the Committee.

14. The CHAIRMAN said that that was one of the reasons why he anticipated a change in the climate of opinion. The consultation had represented a very large group of countries from all regions and it was encouraging to have their support. He proposed that the Committee should take note of Mr. Banton's point and endorse the conclusions of the global consultation.

It was so decided.

15. The CHAIRMAN said that the Committee had concluded its consideration of agenda item 7.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3)

16. The CHAIRMAN said that, under agenda item 3, members would either have to volunteer as rapporteurs for the next session or be designated as rapporteurs. Those who could serve as rapporteurs at the present time were Mr. Ferrero Costa, Mr. Foighel, Mr. Garvalov, Mr. Reshetov, Mr. Rhenan Segura, Mrs. Sadiq Ali, Mr. Song Shuhua, Mr. Vidas, and Mr. Yutzis.

17. Mr. ABOUL-NASR thought that it was necessary to bear in mind the number of periodic reports to be studied at the next session. With regard to the question of volunteers, if none was forthcoming he thought that the system of rapporteurs should be abandoned.

18. Mr. SHERIFIS said, with regard to the members who were not present, that the Secretariat could contact them by letter and ask them whether they would be willing to examine four or five reports. In his opinion, the system of rapporteurs had been quite effective.

19. The CHAIRMAN said that there was no problem, since the members who were not present had already given their consent with regard to the allocation of reports. He asked whether any of those present did not wish to serve as rapporteur at the next session.

20. Mr. GARVALOV said that he would prefer not to be designated as a rapporteur for the next session.

21. Mr. SONG Shuhua said that he would have no objection to serving as rapporteur. He recalled that China would be submitting its periodic report at the next session and he hoped that not too many reports would be allocated to him.

22. Mr. FERRERO COSTA said that he would not object to being designated as a rapporteur. He thought that four reports could be allocated to each rapporteur.

23. The CHAIRMAN said that Mr. Song Shuhua would be entrusted with the periodic reports of the Dominican Republic, Ethiopia, Finland and Jordan; Mr. Ferrero Costa with those of Bangladesh, China, Denmark, the German Democratic Republic, and Hungary; Mrs. Sadiq Ali with those of Barbados, the Byelorussian SSR, Italy, the Republic of Korea and Yugoslavia; Mr. Rhenan Segura with those of Czechoslovakia, Democratic Yemen, Ecuador and Qatar; Mr. Foighel with those of Haiti, Iraq, the Union of Soviet Socialist Republics, and the United Kingdom; Mr. Yutzis with those of Canada, the Holy See, Malta, Netherlands and the Ukrainian SSR; and Mr. Reshetov with those of Argentina, Australia and Cameroon.

24. Turning to the question of overdue reports, he suggested that the Committee should take note of the relevant document (CERD/C/187) and request the Secretariat to send the usual reminders to the States parties concerned.

25. After an exchange of views in which Mr. BESHIR, Mr. ABOUL-NASR and the CHAIRMAN took part, Mr. AHMADU said that some of the reminders sent to States parties were merely computer-generated circulars and lacked the personal touch. He thought that a personal letter from the Secretary-General or the official responsible for sending the reminders might prove more effective.

26. The CHAIRMAN proposed that he should send personal letters to States parties which had received 10 or more reminders, drawing attention to their reporting obligations under the Convention.

27. Mr. SHERIFIS supported the idea of sending personal letters to States parties with overdue reports, since circular letters clearly had little effect and, indeed, some States had never submitted a report. He also suggested that Mr. Martenson, the Under-Secretary-General for Human Rights, might be asked to hold meetings with the representatives in Geneva of States parties which had failed to submit their initial report and should make a personal appeal to them to convey the Committee's concern to their respective Governments. He hoped that a similar procedure could be adopted in New York with regard to countries which did not have permanent missions in Geneva. He stressed the importance of personalizing contacts with States parties and said that he fully endorsed Mr. Ahmadu's comments in that respect.

28. Mr. SHAHI said that there were approximately 93 States parties with overdue reports. There was no need at present to take action with regard to the 41 or 42 States which had merely fallen behind that year and had not yet been sent a reminder. However, the remaining 50 or 52 countries were a source of grave concern. He supported the suggestion that the Under-Secretary-General for Human Rights might be requested to assist the Committee and, in his view, Mr. Martenson should discuss the matter with the permanent representatives of all States which had received 10 or more reminders, not only the three countries who had failed to submit an initial report. In addition, the Chairman should send personal letters to the Foreign Ministers of those 50 or 52 countries. He reminded the Committee that four of its members, the Chairman, Mr. Ahmadu, Mr. Sherifis and Mr. Aboul-Nasr, were ambassadors who enjoyed wide-ranging diplomatic contacts. He called on those members to use their personal good offices to bring the problem to the attention of the diplomatic personnel of States parties concerned, as he believed that such an approach could make a significant impact.

29. The CHAIRMAN said that the permanent representatives of many countries in both Geneva and New York, followed the Committee's work very closely but that did not alter their Governments' reluctance to submit reports. Since 21 reminders had, for instance, been sent to Sierra Leone, he was a little sceptical of some of the ideas which had been put forward, although he agreed with Mr. Ahmadu that circular letters were rarely effective and some further action was required. He supported the idea of the Committee calling on the General Assembly to remind States of their reporting obligations under the Convention and also endorsed the suggestion made by Mr. Sherifis and Mr. Shahi that the Under-Secretary-General for Human Rights might be requested to bring the issue of long overdue reports to the attention of the permament representatives of the States parties concerned in Geneva. The same function should be performed by the Secretariat in New York with regard to countries without permanent missions in Geneva. He himself undertook to communicate personally with the Foreign Ministers of countries which had been sent 10 or more reminders. If he heard no objection, he took it that those measures were acceptable to the Committee.

It was so decided.

CONSIDERATION OF COPIES OF PETITIONS, COPIES OF REPORTS AND OTHER INFORMATION RELATING TO TRUST AND NON-SELF-GOVERNING TERRITORIES AND TO ALL OTHER TERRITORIES TO WHICH GENERAL ASSEMBLY RESOLUTION 1514 (XV) APPLIES, IN CONFORMITY WITH ARTICLE 15 OF THE CONVENTION (agenda item 6) (CERD/C/37/CRP.3)

30. Mr. PARTSCH, introducing document CERD/C/37/CRP.3, said that the document consisted of a preamble followed by two alternative drafts (options A and B), prepared by the various working groups on Trust and Non-Self-Governing Territories. Option B followed the usual format and contained the reports of each working group. The working group on Atlantic and Caribbean territories, including Gibraltar, had produced some observations which the members themselves considered unsatisfactory and which were very loosely related to obligations under article 15 of the Convention. The working group on Pacific and Indian Ocean territories had adopted a different working method and had chosen to emphasize the problems it faced and to refer separately to article 15, paragraph 2 (a), and article 15, paragraph 2 (b), of the Convention. The working group on African territories had been asked by the Secretary-General of the United Nations not to examine any matters relating to

Namibia to avoid jeopardizing the imminent elections there and had considered only two documents on the Western Sahara, neither of which had provided relevant information.

31. It was therefore clear that, owing to the inadequacy of the available material, the working groups had been unable to make any substantial observations. That being so, it was considered inappropriate to follow the usual practice of referring to the specific situations in the various territories. It had been suggested that the Committee should adopt the more general observations drafted by the working group on Pacific and Indian Ocean territories, as reflecting the views of all three groups. The preamble should be retained and be followed by the paragraph described in the paper as option A, without the heading "General". The conveners of the various working groups had decided to submit both alternatives to the Committee and to recommend the adoption of option A.

32. Mr. ABOUL-NASR, speaking as convener of the working group on African territories, thanked Mr. Partsch for his introduction and confirmed that all three working groups had been unable to function because of the dearth of relevant information. The problem had existed for many years; the Committee had repeatedly brought it to the attention of the General Assembly and had requested information from the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independance to Colonial Countries and Peoples, the Trusteeship Council and the Secretary-General, although such requests had rarely evoked a response. Consequently, the reports prepared by the working groups could only note the lack of information and express hopes for an improvement in the situation. It was vital to make the extent of the problem clear to the General Assembly and he therefore supported option A. He added that material relevant to the Committee's work was at the disposal of the Secretary-General, the Special Committee and the Sub-Commission on Prevention of Discrimination and Protection of Minorities and stressed the need to ensure its transmission to the Committee on the Elimination of Racial Discrimination.

33. Mr. SHAHI agreed with the comments made by Mr. Partsch, whom he thanked for his clear introduction, and by Mr. Aboul-Nasr. When the matter had been discussed among the three conveners, including himself, under the chairmanship of Mr. Partsch, the other members of the various working groups had not been present and he had not had the opportunity to inform them subsequently about the three options.

34. The material available to the working group on the Atlantic and Caribbean territories, including Gibraltar, contained little relevant information on racial discrimination, and the group had been able to do little more than repeat earlier statements requesting more information. In particular, since the United States of America was not a party to the Convention, it had not been clear whether the question of the United States Virgin Islands should be discussed.

35. He accordingly supported option A, as amended by Mr. Partsch. However, he considered that the Committee's views need not be submitted in the form of a resolution, but should be included in its report in two paragraphs, the first stating that the Committee had examined the information contained in the documents, and the second stating that the Committee observed that, in regard to the territories in question, the total absence of copies of petitions and information on other circumstances had made it impossible to produce a report.

36. Mr. SHERIFIS, thanking Mr. Partsch for his lucid introduction, said that the working group on the Pacific and Indian Ocean territories had spent a considerable amount of time on the item and had made a thorough examination of the voluminous documentation provided. The documents were instructive but contained little information relevant to the Committee's terms of reference. Like the working groups that had been set up in the past and like the working group on the Atlantic and Caribbean territories, his working group had found itself unable to perform its duties and submit any valid comment. There was now a need for the Committee to state its position very clearly, as it could not continue year after year merely to express regret. He personally was strongly in favour of option A, a view which he believed would be shared by the other members of his working group.

37. He consequently supported option A as explained by Mr. Partsch and further clarified by Mr. Aboul-Nasr and Mr. Shahi. He too would favour a simplified version, with an introductory part along the lines suggested by Mr. Shahi, the precise wording to be determined by the Secretariat in agreement with Mr. Partsch, and an operative paragraph as suggested but without the heading "General".

38. Mr. GARVALOV expressed agreement with the Committee members who had spoken before him, but considered it necessary for certain facts to be stated to ensure that interested parties reading the Committee's report would know that the Committee was aware of those facts.

39. From his own experience in the United Nations, he knew beyond a doubt that there was ample relevant material that could have been provided to the Committee and enabled it to discharge its mandate under article 15. That material was in the form of petitions before the Special Committee, the Trusteeship Council, the United Nations Council for Namibia, the Special Committee against Apartheid and the Fourth Committee of the General Assembly. The only documents made available to the Committee were papers prepared by the Secretariat for consideration by the Special Committee. He failed to see why the copies of petitions and the reports expressly provided for in article 15 of the Convention were being withheld by the competent United Nations bodies to which he had referred. None of the petitions he himself had seen were restricted. The Committee's position must be made very clear so that those United Nations bodies would be aware of the object of the Committee's request. If the situation continued, he would be compelled to believe that there was some sort of decision by those bodies to withhold copies of petitions from the Committee. Although he doubted whether such a decision had been taken publicly, he was not sure whether there was not some attempt behind the scenes to prevent the Committee from considering very relevant material and cases of racial discrimination in the Trust and Non-Self-Governing Territories and other territories to which General Assembly resolution 1514 (XV) applied. It was a matter which called for reflection.

40. The CHAIRMAN said that there was only one conclusion to be drawn from the exchange of views in the Committee on item 6, namely, that the conveners of the three working groups were all agreed that option A should form the basis of the Committee's statement with respect to article 15 of the Convention. Option A reflected the views of all members, including those most recently expressed by Mr. Garvalov.

41. He agreed with Mr. Shahi that the Committee's views should be expressed as a two-paragraph statement in its report and not as a resolution. The heading would be as in document CERD/C/37/CRP.3, as would the first paragraph, with the necessary editorial changes to make it a positive statement as opposed to a preambular paragraph. The text of the second paragraph of the statement would correspond to the wording of the paragraph under option A, with the deletion of the heading "General".

42. Mr. PARTSCH suggested that the three groups of territories should be clearly named somewhere in the text.

43. The CHAIRMAN said that the first part of the statement covered all Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applied and that there was therefore no need for any further clarification.

44. If there were no objection, he would take it that the Committee wished to adopt that statement for inclusion in its report.

It was so decided.

The meeting rose at 12.20 p.m.

860th meeting

Thursday, 31 August 1989
at 10.30 a.m.

Chairman: Mr. LAMPTEY

STATEMENT BY THE CHAIRMAN

1. The CHAIRMAN said that he was able to report that, in the course of a meeting he had just had with the Under-Secretary-General for Human Rights, it had emerged that the latter was extremely sympathetic towards some of the decisions adopted and ideas expressed at the current session of the Committee, and was most supportive of some of the Committee's objectives. He believed that the meeting would yield positive results in due course.

REPORT OF THE COMMITTEE TO THE GENERAL ASSEMBLY AT ITS FORTY-FOURTH SESSION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION (agenda item 8) (CERD/C/37/CRP.1 and Add.1-16, CERD/C/37/CRP.2 and Add.1-4)

Document CERD/C/37/CRP.1

2. Mrs. SADIQ ALI, (Rapporteur), said that the name of Mr. Reshetov should be inserted after Mr. Foighel in paragraph 6. In response to a comment by Mr. ABOUL-NASR, she agreed that the name of Mr. Rhenan Segura should also be added.

3. After an exchange of views in which Mr. ABOUL-NASR, Mr. AHMADU, Mr. BESHIR, Mr. FERRERO COSTA, Mr. SHERIFIS and Mr. HOUSHMAND (Representative of the Secretary-General) took part, the CHAIRMAN proposed that the word "only" should be deleted from the second sentence of paragraph 6.

It was so decided.

Document CERD/C/37/CRP.1 as a whole, as amended, was adopted.

Document CERD/C/37/CRP.1/Add.1

4. Mr. GARVALOV, referring to the statement in the first sentence of paragraph 15 that the rapporteur system "should now be formalized", said it was his impression that the Committee had taken the view that the system was still at the experimental stage and that there had been no decision as yet to institutionalize it.

5. Mr. ABOUL-NASR said that the text was repetitious, since subparagraph 6 of paragraph 17 also dealt, in similar terms, with the system of using country rapporteurs.

6. The CHAIRMAN pointed out that the text of subparagraph 6 of paragraph 17 was part of the wording of the Committee's decision, which accounted for the repetition. With regard to paragraph 15, he agreed with Mr. Garvalov's comments and proposed that the words "should now be formalized" should be replaced by "should be continued".

It was so decided.

Document CERD/C/37/CRP.1/Add.1 as a whole, as amended, was adopted.

Document CERD/C/37/CRP.1/Add.2

7. Mr. HOUSHMAND (Representative of the Secretary-General) said that tables 1 and 2 needed to be adjusted to take into account the fact that the secretariat had received the tenth periodic report of Finland. The secretariat would amend the tables accordingly and would make the appropriate changes in paragraph 2, of the document.

Document CERD/C/37/CRP.1/Add.2 as a whole, as amended, was adopted.

Document CERD/C/37/CRP.1/Add.3

8. The CHAIRMAN, replying to a question by Mr. ABOUL-NASR about the repetition in paragraph 10 of the statement concerning the rapporteur system, pointed out that the statement appeared in three distinct sections, dealing respectively with reporting obligations, consideration of reports and a decision by the Committee, and should therefore remain as it stood.

Document CERD/C/37/CRP.1/Add.3 was adopted.

Document CERD/C/37/CRP.1/Add.4

Paragraphs 1-15 (France)

9. Mrs. SADIQ ALI, (Rapporteur) said that the words "alleged acts of violence committed by police officers against Algerians" in the last sentence of paragraph 6 should be amended to include the word "unlawful" before "violence".

10. The CHAIRMAN expressed doubts as to whether violence in that context could be considered lawful.

11. Mr. BANTON said that in his country the police were entitled to use violence to subdue those resisting arrest.

12. Mr. SHAHI agreed that the police did use violence, for instance in the form of baton charges during public disturbances.

13. The CHAIRMAN objected that the use of force by the police in such circumstances was a law enforcement measure.

14. Mr. PARTSCH said that a distinction must be drawn between lawful and unlawful violence. Law enforcement might in some instances amount to violence, but was lawful. The Committee was seeking information about unlawful acts of violence, and unless that were specified, the Committee might seem to be asking the French authorities to report on legitimate acts.

15. The CHAIRMAN said that, in the light of the discussion, he concurred with the need to insert the word "unlawful".

16. Mrs. SADIQ ALI, (Rapporteur) said that the words "the relevant parts of future reports" in paragraph 8 should be replaced by "inquiries into their effectiveness".

Paragraphs 1-15, as amended, were adopted.

Paragraphs 16-22 (Mexico)

Paragraphs 16-22 were adopted.

Document CERD/C/37/CRP.1/Add.4 as a whole, as amended, was adopted.

Document CERD/C/37/CRP.1/Add.5

Paragraphs 1-16 (Iceland)

17. *Mrs. SADIQ ALI*, (Rapporteur) said that paragraph 16 was not clear as it stood, and proposed that the reference to the International Convention on the Elimination of All Forms of Racial Discrimination in the second sentence of that paragraph should be dropped.

18. *Mr. PARTSCH* explained that the sentence related to the reservation Iceland had made in favour of the other procedures; it would therefore be correct to delete the words "as well as the International Convention on the Elimination of All Forms of Racial Discrimination", since the duplication that Iceland wished to avoid was with the European Convention or the Covenants.

19. *Mr. ABOUL-NASR* proposed that the second sentence should end with the words "International Covenant on Civil and Political Rights" and be followed by a sentence reading: "As to the International Convention on the Elimination of All Forms of Racial Discrimination, it merely wished to avoid duplication."

It was so decided.

Paragraphs 1-16, as amended, were adopted.

Paragraphs 17-33 (Venezuela)

20. *Mr. YUTZIS* proposed that the words "or misunderstanding" in the second sentence of paragraph 21 should be deleted, since the question had been one of a fundamental difference of opinion.

21. *Mr. FERRERO COSTA* agreed with Mr. Yutzis.

22. *Mr. ABOUL-NASR* said that he had no difficulty with the word "misunderstanding", to which Mr. Yutzis had objected, but had a problem with the use of the word "Committee" in the second sentence of paragraph 21. In his view, the words "members of the Committee" should be used, because there had in fact been a difference of opinion between the State party and members of the Committee, but not the Committee as such.

23. *Mr. BANTON* said that he was opposed to the suggestion by Mr. Aboul-Nasr. If the Committee decided to make further amendments to the text along the lines suggested by Mr. Aboul-Nasr, he would propose the replacement, in the first sentence of the paragraph, of the words "role and aims" by the word "duties".

24. *Mr. SHAHI* said that he could accept paragraph 21, as amended by Mr. Yutzis. He understood the concern expressed by Mr. Aboul-Nasr about the use of the word "Committee", but thought that the text should remain as it stood, since it reflected what had actually taken place in the Committee.

25. *Mr. ABOUL-NASR* said that he would not press his point, since it was clear from the second sentence of the paragraph that the opinion expressed was that of the members of the Committee.

26. *The CHAIRMAN* suggested that the amendment to paragraph 21 proposed by Mr. Yutzis should be adopted.

It was so decided.

27. *Mr. YUTZIS* proposed the deletion, in the third sentence of paragraph 25, of the words "no matter how little racial discrimination existed".

28. After a discussion in which *the CHAIRMAN* and *Mr. YUTZIS* took part, *Mr. FERRERO COSTA* proposed that the sentence should be amended to read: "It was pointed out that, even if, as stated by the Government, no racial discrimination existed in Venezuela, that did not absolve Venezuela from complying with the compulsory provisions of article 4 of the Convention, under which a State's domestic law must include provisions to punish racial discrimination in the event of its occurrence."

It was so decided.

29. *Mrs. SADIQ ALI* (Rapporteur) proposed that, in paragraph 26, the words "the petition received and transmitted to it by one of the Committee's members" should be replaced by the words "a petition submitted to them by a particular indigenous group".

30. *Mr. ABOUL-NASR* said that he wished to consider paragraph 26 in conjunction with paragraph 33, since both concerned an issue involving a member of the Committee. In his opinion, it was a dangerous precedent to establish a procedure under which a member of the Committee could be used as a means to transmit a petition to a State party. He feared that objections would be raised if the Committee allowed such a procedure. While understanding the reason why Mr. Banton had transmitted the petition, he thought that all references to it should be deleted.

31. *The CHAIRMAN* said he recognized that the point raised by Mr. Aboul-Nasr was a valid one but considered that it should have been mentioned during the Committee's discussion of the question. The report had to reflect what had actually taken place in the Committee. Consequently, the Committee could not delete any reference to the petition.

32. *Mr. ABOUL-NASR* said that so long as his view was reflected in the summary record of the meeting, he would be satisfied.

33. *Mr. BANTON* said he was concerned that Mr. Aboul-Nasr's view might be based on a misunderstanding.

34. *The CHAIRMAN* said that it was not possible to discuss that issue at the present time, since the Committee was considering the adoption of its report.

35. He suggested that the amendment to paragraph 26 proposed by the Rapporteur should be adopted.

It was so decided.

36. Mr. YUTZIS said that paragraph 31 was incomplete and did not reflect the views expressed by members of the Committee in response to the statement by the representative of Venezuela. He therefore proposed that the following text should be inserted in the paragraph: "In this connection, members of the Committee, without detracting from the importance of the need to comply with article 4 of the Convention, pointed out that Venezuela was not the only country that had problems with this article and that the Committee had made these comments to many other State parties."

37. The CHAIRMAN pointed out that the structure of the report was such that the Committee dealt with one article at a time. The point raised by Mr. Yutzis must be reflected in paragraph 25 rather than in paragraph 31.

38. Mr. FERRERO COSTA said that the amendment proposed by Mr. Yutzis contained an important idea and he thought that it should be inserted between the third and fourth sentences in paragraph 25.

39. The CHAIRMAN said that if he heard no objection, he would take it that the Committee agreed to adopt the further amendment to paragraph 25 proposed by Mr. Yutzis.

It was so decided.

40. Mrs. SADIQ ALI (Rapporteur) proposed that the phrase "a member of the Committee had transmitted to the Ministry of Foreign Affairs" in the penultimate sentence of paragraph 33 should be replaced by the words "had been mentioned".

41. Mr. GARVALOV pointed out that the last sentence of the paragraph contained a reference to "the member of the Committee concerned".

42. Mr. BANTON said that the present wording of paragraph 33 reflected the statement by the representative of Venezuela that he would transmit information to him personally.

43. The CHAIRMAN agreed that the paragraph gave a factual account of what had taken place.

44. Mr. ABOUL-NASR said that, as it now stood, paragraph 33 provided the Government of Venezuela with grounds for alleging that the Committee had exceeded its competence. The Committee was facing many serious problems and should not add to its difficulties in that way. He therefore maintained his opposition to the inclusion of any reference to a particular member of the Committee.

45. The CHAIRMAN suggested that the Rapporteur's proposal should be accepted and that the last sentence of paragraph 33 should be deleted.

It was so decided.

Paragraphs 17-33, as amended, were adopted.

Paragraphs 34-42 (Madagascar)

Paragraphs 34-42 were adopted with minor drafting changes.

Paragraphs 43-67 (Poland)

46. Mr. ABOUL-NASR said that he considered paragraph 54 to be unrelated to the International Convention on the Elimination of All Forms of Racial Discrimination, particularly the latter part of the paragraph. In his opinion, adoption of the paragraph would leave the Committee open to serious criticism.

47. Mr. AHMADU requested an explanation of the relevance of paragraph 54 to the Convention from the member of the Committee who had asked the questions reflected in that paragraph.

48. Mrs. SADIQ ALI said that the question on government subsidies for minority religious groups who found it difficult to maintain their places of worship was related to the right to freedom of thought, conscience and religion, while the question on restrictions on contact between orthodox believers in Poland and the Soviet Union concerned freedom of movement as the two groups had not been permitted to meet in the past.

49. The CHAIRMAN said he was not sure why it was necessary to refer to orthodox believers in the Soviet Union in the context of the report of Poland.

50. Mrs. SADIQ ALI said that many orthodox believers in Poland had relations in the Soviet Union and contact between them had been prohibited.

51. Mr. AHMADU said that many Governments took exception to the word "régime" and he proposed that it should be replaced by "administration" or "Government" in paragraph 55.

52. After an exchange of views in which Mr. ABOUL-NASR, the CHAIRMAN, Mr. PARTSCH, Mr. SHAHI and Mr. SHERIFIS took part, Mr. GARVALOV proposed that the phrase "the new régime in Poland" should be amended to read "the Government of Poland".

It was so decided.

53. Mr. PARTSCH proposed that the words "and the agreements" in the last sentence of paragraph 59 should be amended to read "and later agreements", since 20 years had elapsed between the two sets of agreements concerned.

It was so decided.

54. Mr. ABOUL-NASR said he wished to place his view on record that paragraph 60 and the question to which it responded were totally unrelated to the International Convention on the Elimination of All Forms of Racial Discrimination.

Paragraphs 43-67, as amended, were adopted.

Document CERD/C/37/CRP.1/Add.5 as a whole, as amended, was adopted.

The meeting rose at 1.05 p.m.

861st meeting

Thursday, 31 August 1989
at 3.30 p.m.

Chairman: Mr. LAMPTEY

REPORT OF THE COMMITTEE TO THE GENERAL ASSEMBLY AT ITS FORTY-FOURTH SESSION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION (agenda item 8) (*continued*) (CERD/C/37/CRP.1 and Add.1-16, CERD/C/37/CRP.2 and Add.1-4)

Document CERD/C/37/CRP.1/Add.6

Paragraphs 1-14 (Norway)

1. Mrs. SADIQ ALI (Rapporteur) announced a number of amendments to the paragraphs concerning consideration of the report of Norway. In all versions, the following sentence should be added at the end of paragraph 6: "It was inquired whether there was a possibility of government subsidies to the press being withdrawn in cases where it had defended racial discrimination." In the last sentence of paragraph 7 in the English text, the word "the" needed to be added before "real participation".

2. The single sentence in paragraph 8 should be supplemented by the following clause: "... [on racial grounds], and whether they were effective. With reference to the information contained in annex II of the eighth periodic report, it was suggested that the Government of Norway should publicize more widely the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and the International Convention on the Elimination of All Forms of Racial Discrimination".

Paragraphs 1-14, as amended, were adopted.

Paragraphs 15-25 (Egypt)

3. Mrs. SADIQ ALI (Rapporteur) pointed out that, in the last sentence of paragraph 22, the word "Israelis" should be replaced by "Jews".

4. Mr. YUTZIS proposed that the following clarification should be added before the final sentence of paragraph 19: "In that regard, the members of the Committee considered that Egypt had not yet fully implemented article 4 of the Convention."

5. The CHAIRMAN confirmed, after reading the relevant summary record, that that opinion had indeed been expressed in the Committee.

The proposal was adopted.

Paragraphs 15-25, as amended, were adopted.

Paragraphs 26-39 (Austria)

6. Mr. GARVALOV said he was not satisfied with the first two sentences of paragraph 36, which said on the one hand that "Austria's policy ... was in line with that of the United Nations Security Council" and on the other that it "maintained diplomatic relations with South Africa and had an embassy in Johannesburg". The Security Council did not encourage diplomatic relations of any kind with South Africa.

7. The CHAIRMAN replied that, whatever the Committee might feel, the two sentences were a very accurate rendering of what the Austrian representative had said.

8. Mr. ABOUL-NASR confirmed that the representative of Austria had made the remarks recorded in the report, but stated that the Security Council had never pronounced on diplomatic relations with South Africa.

9. The CHAIRMAN insisted that, in any case, the report should reflect the remarks made by the representatives of States parties. Paragraph 36 should therefore be retained in its present form.

Paragraphs 26-39 were adopted.

Paragraphs 40-46 (Maldives)

10. Mr. ABOUL-NASR wondered whether it should not be made clear, in paragraph 40, that the representative of the State party had been absent because the Maldives did not have a mission in Geneva.

11. The CHAIRMAN replied that the Committee did not know officially why the State party had not been represented; the State party had been sent due notification to which it had not replied. Futhermore, the Committee had had occasion to note that some countries without a mission in Geneva had none the less sent a representative. It was preferable to retain paragraph 40 in its present form.

Paragraphs 40-46 were adopted.

Document CERD/C/37/CRP.1/Add.6 as a whole, as amended, was adopted.

Document CERD/C/37/CRP.1/Add.7

Paragraphs 1-5 (Chad)

12. In reply to Mr. Aboul-Nasr, who feared that paragraph 2, which indicated that members of the Committee had "regretted the fact that the State concerned was not represented" might imply censure or criticism, the CHAIRMAN declared the paragraph to be no more than a statement of fact, which underlined that the presence of a representative of the State party was helpful during consideration of its report, and consequently expressed the Committee's regret without there being any value-judgement involved.

Paragraphs 1-5 were adopted.

Paragraphs 6-10 (Tonga)

13. Mr. GARVALOV pointed to a lack of consistency in the formulation of the Committee's view concerning the absence of a representative for three States parties: in the case of the Maldives and Tonga it was the "Committee" which regretted that absence whereas in the case of Chad it was "members" of the Committee.

14. The CHAIRMAN said he understood Mr. Garvalov's objection, but felt that the primary concern was to note the regret either of the Committee or of its members, which had been done in all three cases without judgement or criticism.

15. Mr. SHERIFIS proposed, in the interests of harmonization, that in the English text the article "The" beginning the first sentence of paragraph 7 should be deleted.

It was so decided.

Paragraphs 6-10, as amended, were adopted.

Paragraphs 11-16 (Niger)

16. Mr. AHMADU asked for the word "régime" to be replaced by "Government" in the fifth line of paragraph 11.

17. Mr. PARTSCH said that he had himself talked of a change of "régime" during the debate because the new Government had a very different style. In particular, political prisoners held without trial under the previous Government had been either released or tried. He was, however, prepared to accept the word "Government".

18. The CHAIRMAN pointed out that the changes which had taken place were already reflected in the last sentence of paragraph 11. The reference to a "new régime" could therefore be omitted from the second phrase, which could simply read: "without the participation of a representative of the reporting State ..., a fact regretted by the Committee".

It was so decided.

Paragraphs 11-16, as amended, were adopted.

Paragraphs 17-33 (Rwanda)

19. Mrs. SADIQ ALI (Rapporteur) pointed out that in paragraph 19 of the English text the word "guideline" should be in the plural.

Paragraphs 17-33, as amended, were adopted.

Paragraphs 34-51 (Mongolia)

20. Mrs. SADIQ ALI (Rapporteur) proposed that the clause "if the Kazakhs were provided with mosques" should be inserted after the words "atheist State" in the last sentence of paragraph 42.

21. Mr. GARVALOV also noted that the wording of that sentence should be amended to read "how the equilibrium between Buddhism and socialism was maintained" rather than "... tolerated".

Paragraphs 34-51, as amended, were adopted.

Document CERD/C/37/CRP.1/Add.7 as a whole, as amended, was adopted.

Document CERD/C/37/CRP.1/Add.8

Paragraphs 1-17 (Algeria)

22. Mr. ABOUL-NASR pointed out that in paragraphs 2, 9, 12 and 16 of the English text, the word "he" should be replaced by "she".

Paragraphs 1-17, as amended, were adopted.

Paragraphs 18-38 (Colombia)

23. Mr. FERRERO COSTA proposed a number of amendments to paragraph 22. Firstly, in the second sentence the words "must seriously affect" should be replaced by "seriously affected" and the word "therefore" should be inserted before "expressed a desire". Secondly, a third sentence should be added to read: "With reference to this problem, special mention was made of the report on Colombia of the Working Group on Enforced or Involuntary Disappearances presented to the Commission on Human Rights (E/CN.4/1989/18/Add.1 of 6 February 1989)." Thirdly, he proposed that the words "disagreed with such an assertion and" should be added after the words "members of the Committee" in the first sentence of paragraph 23.

24. Mr. SHAHI proposed that, in the first sentence of paragraph 23, "no acts", should be amended to read "no such acts".

25. Mr. FERRERO COSTA, referring to paragraph 24, proposed to add at the beginning of that paragraph, after the words "Constitutional Reform Bill", the following phrase: "which includes a provision prohibiting incitement to racism and racial discrimination"; to insert, in the eighth line of the English text, the word "the" before "Comprehensive Rural Development Plan"; to replace in the second sentence the words "other important minority groups" by the expression "the important black minority"; to add in the third sentence, after the words "new legislation", the words "on agrarian reform"; and to insert at the end of the paragraph the following sentence: "It was also asked what resources would be made available by the Government to enable the indigenous population to preserve the natural resources of the tropical forests."

26. The CHAIRMAN, recalling that the report of the Committee was based on what had appeared in summary records of meetings, asked members of the Committee who wished to put forward proposals which were not reflected in the relevant summary record to have the latter corrected accordingly.

27. Mr. SHAHI pointed out that to date the Committee had only received a few provisional summary records and that, for his part, he had not had sufficient time to submit a correction to a summary record in which questions he had put concerning the report of another country had not been noted. He felt, however, that as Mr. Ferrero Costa insisted that his proposal should appear in the report, the latter's amendments should be adopted even if they were not reflected in the relevant summary records.

28. The CHAIRMAN said that he was quite prepared to adopt Mr. Ferrero Costa's proposals, but hoped that they would also be incorporated in a correction to the summary record.

29. Mr. FERRERO COSTA stated that, in formulating his amendments, he was merely repeating what he had already said at the meetings at which the report of Colombia had been considered.

30. The CHAIRMAN said that summary records of meetings were of necessity résumés of debates and not *in extenso* accounts, and that it was quite possible that remarks made during a meeting were not reported. He again called upon members to ensure that any proposal not reflected in the summary records should be the subject of a correction.

It was so decided.

31. Mr. BANTON informed members that he had found the passages in the summary record where the points mentioned by Mr. Ferrero Costa were recorded.

32. Mr. FERRERO COSTA, referring to paragraph 28, proposed to add at the beginning of that paragraph, after the words "Presidential Adviser" the words "on the Defence, Protection and Promotion of Human Rights".

It was so decided.

33. Mr. FERRERO COSTA, referring to paragraph 36, proposed that the words "article 5" in the first line should be replaced by "article 6" and that the content of the two final sentences, which referred to article 5 of the Convention, should be moved to the beginning of the paragraph. Paragraph 36 would thus begin "With reference to article 5, the representative said that there were no restrictions on the right to vote and be elected. Even the illiterate could vote. Replying to the questions ...", and would end with the word "Attorney-General".

34. The CHAIRMAN suggested that the amendment proposed by Mr. Ferrero Costa should be worded in the following manner: "Replying to the questions posed in connection with articles 5 and 6 of the Convention, the representative said that there were no restrictions on the right to vote and be elected. Even the illiterate could vote. He also provided additional information ... Attorney-General."

It was so decided.

Paragraphs 18-38, as amended, were adopted.

Paragraphs 39-54 (Philippines)

35. Mrs. SADIQ ALI (Rapporteur), referring to paragraph 45, proposed the addition of the words "including Mindanao" after the words "autonomous regions" towards the middle of that paragraph.

It was so decided.

36. Mr. YUTZIS, referring to paragraph 42, proposed the addition of the following after the first sentence: "Members of the Committee also declared their satisfaction over the coming of democracy and consequently the important political changes produced in this sense in the Philippines."

37. Mr. SHAHI suggested that Mr. Yutzis' proposal should be reworded to read: "Members also expressed their satisfaction over the coming of democracy and the important political changes resulting from it."

38. The CHAIRMAN said that he was reluctant to give value-judgements, and thought it would be better merely to state that some members had expressed satisfaction at political developments in the Philippines and the changes which had occurred. Furthermore, he did not recall any member of the Committee ever having said that there was no democracy in the Philippines.

39. Mr. YUTZIS said that, as Rapporteur entrusted with the examination of the report of the Philippines, it was his duty to insist that the coming of democracy in that country was mentioned in the final report of the Committee, and that he had pointed that out when the report of that State party was being considered. He also remembered having said that the exercise of democracy was the only way to ensure respect for human rights in general and the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination in particular, and recalled that no member of the Committee had made any comment on that point. Furthermore, the failure to recognize that the Government of President Marcos had been a dictatorship would also amount to a value-judgement by default. Like Argentina, the Philippines had made a transition from a dictatorship to a democracy.

40. Mr. ABOUL-NASR said that it was inappropriate for the Committee to enter into a discussion on the concept of democracy at the current stage of its work. If the substance of Mr. Yutzis' proposal was already included in the relevant summary record, then the Committee could adopt it without difficulty. If that was not the case, it might confine itself to a general statement that the members of the Committee had welcomed the latest developments in the Philippines. Furthermore, the fact that a person had not been contradicted did not imply unqualified support for his views, and silence should not always be interpreted as acceptance of a point of view which had been expressed.

41. Mr. SHERIFIS said that, if Mr. Yutzis' opinion had already been reflected in the summary record, then it should also appear in the report, and that there was no need to enter into a debate on substantive issues.

42. The CHAIRMAN said that, while no one disputed the progress that had been made in the Philippines in the area of human rights, he could not subscribe to any judgement concerning the coming of democracy to that country.

43. Mr. FERRERO COSTA asked Mr. Yutzis if he would mind repeating his proposal.

44. Mr. YUTZIS said that he believed that a committee which dealt with human rights could draw a distinction between a dictatorship and a democracy. A transition from dictatorship to democracy had indeed taken place in the Philippines, and should be mentioned in the report, as that change could have important consequences in the future for the application of the Convention in that country.

45. To speak out or to remain silent could be equally meaningful. As Rapporteur entrusted with the examination of the eighth, ninth and tenth periodic reports of the Philippines, he had elected to express his viewpoint. He believed that paragraph 42 should mention the fact that members were satisfied that democracy has been established in the Philippines and welcomed the consequent political changes which had taken place. No one had disputed during the debate that the Philippines had made progress towards democracy.

46. Mr. FERRERO COSTA suggested that a compromise formula should be sought. He pointed out that it had been indicated in paragraph 40 that the representative of the State party had made reference to the restoration of democracy in the Philippines when introducing her country's periodic report. That could therefore be mentioned without either referring to the political consequences of the return to democracy, or affirming that it allowed the free exercise of human rights.

47. Mr. ABOUL-NASR welcomed the comments of the representative of the Philippines concerning recent developments in her country, but refused to pass judgement on the restoration of democracy or offer praise without being fully acquainted with the situation.

48. He had asked the representative of the Philippines a question about the application of the Tripoli Agreement, concerning the tribes in the south and the Muslims. He had received a clear answer, namely that although that Agreement had been ratified, it had not been applied and that the Government had suspended its application. Paragraph 48 of the draft report of the Committee to the Assembly merely mentioned that fact without further comment. Although that represented a backward step, he had decided not to pursue that question. As a general principle he preferred not to pass judgement: he did not consider it necessary to welcome the fact that democracy existed in some countries, or to condemn the fact that it did not exist in others.

49. Mr. PARTSCH observed that democracy could be conceived in so many ways that it was difficult to talk of its restoration in a particular country. In most cases it was a question of interpretation. He therefore suggested that the wording proposed by the Chairman should be adopted without further comment.

50. With regard to the comments made by Mr. Yutzis, he said that, for his part, if on occasion he remained silent, that did not necessarily mean that he agreed with everything a speaker had said. He sometimes found himself in broad agreement with what had been said without always approving of the terminology used.

51. Mr. SHAHI suggested that, as a compromise solution, the following sentence should be inserted in paragraph 42 of the report: "Members also expressed their satisfaction over the important political changes that had taken place in the Philippines, which had created conditions for the observance of greater respect of human rights." Martial law had been in existence under President Marcos, and martial law was difficult to reconcile with respect for human rights. The removal of that exceptional régime therefore facilitated the exercise of human rights. However, if the members of the Committee preferred Mr. Partsch's solution, he would withdraw his own proposal.

52. Mr. FERRERO COSTA said that the decision to use or not to use the word "democracy" in the report was a substantive problem. Everyone was free to express opinions which might prove controversial. He could not agree to the omission from the report of a reference to the restoration of democracy in the Philippines. He recalled that in cases of disagreement between members, the rules of procedure should be applied, meaning in the present case that a vote should be taken. He therefore asked for that question to be put to a vote.

53. The CHAIRMAN pointed out that the Committee did not have much more time at its disposal, and that it was not the right moment for a procedural discussion. The Committee should show some imagination; there had never been an obstacle which it had not succeeded in overcoming. Mr. Shahi's proposal was excellent. On the other hand, Mr. Aboul-Nasr felt that it was wrong to pass judgement on the developments in the Philippines, but that was what that country's representative had said should be recorded. Personally he (the Chairman) thought that the report should stress the observance of human rights and not use the word "democracy": the observance of human rights and democracy were two different concepts. Human rights were sometimes violated even under a democratic system. He asked whether Mr. Yutzis was prepared to accept Mr. Shahi's proposal.

54. Mr. YUTZIS said that the point which the Committee was currently examining was of great importance and merited more detailed discussion. He asked the Chairman to read out the first sentence of paragraph 40 of the draft report.

55. The CHAIRMAN read out that sentence, which had the following wording: "The report was introduced by the representative of the State party, who highlighted the process of restoration of democracy in the Philippines, which had led to the freeing of political prisoners, the establishment of the Commission on Human Rights as a body completely independent of the Government, and the ratification of several international instruments on human rights." He pointed out that those were facts which the representative of the Philippines had known to be relevant to the work of the Committee.

56. He said that Mr. Aboul-Nasr had suggested that Mr. Yutzis' proposal should be worded in the following manner: "Members of the Committee took note with satisfaction of the report of the Philippines and congratulated the representative of the State party on her introduction. Members also welcomed the statement on the process of restoration of democracy in the Philippines and its consequential developments." As Chairman, he thought that that wording should prove acceptable to Mr. Yutzis.

57. Mr. ABOUL-NASR considered that to be an acceptable compromise solution.

58. Mr. YUTZIS said he had some difficulty in accepting the terminology used. He wondered why it could not be recognized that important political changes had taken place in the Philippines. He also asked why no member of the Committee had protested when the representative of the Philippines had stated that democracy had been restored in her country. As no member had questioned that statement at the time it had been made, he wondered why the report could not mention facts which had not been disputed at the time that they were reported.

59. Mr. AHMADU thought that it was the word "democracy" which was creating a particular problem for some members. It was easier to agree on a statement that the transition from military government to civilian government was a democratic process. The change from one civilian government to another civilian government which retained the same constitution did not necessarily bring about any change as far as the observance of human rights was concerned.

60. The CHAIRMAN asked Mr. Shahi and Mr. Yutzis to agree on a compromise solution which could be considered by the Committee at the next meeting.

The meeting rose at 6.05 p.m.

862nd meeting

Friday, 1 September 1989
at 10.15 a.m.

Chairman: Mr. LAMPTEY

REPORT OF THE COMMITTEE TO THE GENERAL ASSEMBLY AT ITS FORTY-FOURTH SESSION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION (agenda item 8) (concluded) (CERD/C/37/CRP.1 and Add.1-16, CERD/C/37/CRP.2 and Add.1-4)

Document CERD/C/37/CRP.1/Add.8 (concluded)

Paragraphs 39-54 (Philippines) (concluded)

1. Mr. SHAHI said that, following consultations with Mr. Yutzis, he proposed the insertion of a new second sentence in paragraph 42, to read: "Members also welcomed the statement by the representative of the reporting State on the restoration of democracy in the Philippines and expressed their satisfaction over the important political changes that have taken place and have created conditions for the observance of, and greater respect for, human rights."

2. Mr. ABOUL-NASR said that he had serious misgivings about the proposed insertion, although he would not make a formal reservation.

3. The CHAIRMAN said that, if there was no objection, he would take it that paragraphs 39-54 as amended, were adopted.

It was so decided.

Document CERD/C/37/CRP.1/Add.8 as a whole, as amended, was adopted.

Document CERD/C/37/CRP.1/Add.9

Paragraphs 1-15 (Senegal)

Paragraphs 1-15 were adopted.

Paragraphs 16-35 (Federal Republic of Germany)

4. Mrs. SADIQ ALI (Rapporteur) said that the word "and" in the twelfth line of paragraph 23 should be replaced by "in". The fourth sentence of paragraph 23 should be amended to read: "It was contended, on the other hand, that if a non-State agency, such as a private employer, discriminated on racial grounds, this was not excluded and that the Committee was entitled to know whether, in a matter such as the granting of a labour permit or a residence permit, distinctions were made between immigrant workers themselves on the basis of their national origin." She also proposed the addition of the following sentence to the end of paragraph 26: "One member maintained that article 3 created obligations in respect of all forms of segregation, including forms not caused by the State, and that the State should report on voluntary residential segregation, since this could give rise to racial discrimination."

5. Mr. PARTSCH said that the figure of 196,000 in the last line of paragraph 18 was inaccurate and should be corrected to 96,000. The relevant summary record contained the same error.

6. Mr. ABOUL-NASR said that the second sentence of paragraph 23 was very strongly worded and made serious accusations. In his opinion, it should be made clear that the sentence did not reflect the majority view of the Committee but merely referred to comments made by one member.

7. Mr. SHAHI proposed that the second sentence of paragraph 23 should be amended to read: "It was noted that in its ninth periodic report the Federal Republic of Germany had laid emphasis on the limitations of the obligations of States parties provided for in article 1, paragraph 2, of the Convention and declared that it was not required by the Convention to report on a certain number of matters concerning foreign workers living in its territory".

8. Mr. GARVALOV said that, in the interests of accuracy, the phrase "the German Government's interpretation" in the third sentence of paragraph 23 should be amended to read "the interpretation of the Government of the Federal Republic of Germany" and, similarly, the reference to "German authorities" should read "Federal Republic authorities".

9. Mr. PARTSCH, referring to the amendment to paragraph 26 read out by the Rapporteur, said he understood that the additional sentence had been proposed at the request of Mr. Banton, but wished to know whether it actually reflected the summary record of the meeting concerned.

10. Mr. BANTON pointed out that paragraph 33 reflected the response of the reporting State to his remarks, so that it was only logical that the remarks themselves should be included.

11. Mr. HOUSHMAND (Representative of the Secretary-General) read out the corresponding passage in the summary record of the relevant meeting, which confirmed that those observations had been reflected in the record.

12. Mr. GARVALOV said that the reference to "German nationals" in the sixth sentence of paragraph 30 should be corrected to read "nationals of the Federal Republic of Germany".

13. Mr. AHMADU maintained that the original wording was correct, since the Constitution of the Federal Republic of Germany stated that all Germans, from East or West, were German nationals, even though it was known that the Government of the German Democratic Republic objected to that definition.

14. Mr. GARVALOV said that, if the Committee's report were to remain unchanged, he wished his disagreement to be reflected in the summary records.

15. The CHAIRMAN assured him that his reservation would be reflected in the records.

16. Mr. BANTON suggested that a compromise might be to refer to the "majority".

17. The CHAIRMAN said that that was unacceptable, since the paragraph reflected the actual words of the representative of the Federal Republic of Germany.

18. Mr. PARTSCH thanked Mr. Ahmadu for his statement, which had clarified the issue.

19. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to adopt paragraphs 16-35, as amended.

It was so decided.

Paragraphs 36-48 (Cuba)

Paragraphs 36-48 were adopted.

Document CERD/C/37/CRP.1/Add.9 as a whole, as amended, was adopted.

Document CERD/C/37/CRP.1/Add.10

Paragraphs 1-12 (Luxembourg)

Paragraphs 1-12 were adopted.

Paragraphs 13-29 (Chile)

20. Mr. FERRERO COSTA questioned the use of the words "some members", especially in paragraphs 19, 20, 22 and 23, which was inconsistent with the practice followed elsewhere in the Committee's report. He proposed that, wherever it occurred, that expression should be replaced by "members of the Committee".

21. The CHAIRMAN said he took it that Committee members agreed to that amendment.

It was so decided.

22. Mr. FERRERO COSTA said that paragraph 18 was a crucial one and did not adequately reflect the comments which he, as Rapporteur entrusted with the preliminary examination of the report of Chile, had very carefully prepared concerning the human rights situation in Chile. His statement had been founded on resolutions adopted by the Commission on Human Rights on the basis of the report of the Special Rapporteur. He had had the impression during the Committee's discussion that no objection had been raised to the manner in which he had presented the report of Chile, and would therefore submit an amended text for paragraph 18 for the Committee's consideration.

23. The CHAIRMAN said that consideration of paragraph 18 would accordingly be left open, pending the submission of an amended text by Mr. Ferrero Costa.

24. Mr. ABOUL-NASR drew attention to the reference in paragraph 18 to CERD as a United Nations body. That inaccuracy should be corrected by Mr. Ferrero Costa when he prepared his draft.

25. Mr. FERRERO COSTA, referring to paragraph 19, said that the words "referring to the reports of the Special Rapporteur of the Commission on Human Rights" should be amended to read "referring to the latest report of the Special Rapporteur of the Commission on Human Rights" since it had been that report which had criticized the legislation and practice of the Chilean Government concerning the Mapuche Indians.

26. He also proposed the addition of the sentence: "When considering the report, members of the Committee requested that the Government of Chile should provide in its next periodic report complete information on the demographic composition of the country in general and of the indigenous population in particular".

27. Mr. PARTSCH said that, although such a request might have been included in Mr. Ferrero Costa's introduction, detailed demographic information had in fact been provided repeatedly in the periodic reports of Chile.

28. Mr. FERRERO COSTA said that he had had good reason to request such information, since the demographic data provided by Chile were contradictory.

29. The CHAIRMAN said he took it that Mr. Ferrero Costa's amendments were acceptable to the Committee.

It was so decided.

30. Mr. ABOUL-NASR proposed the deletion of the words "especially subparagraphs (c) and (d)" from the end of paragraph 22, since other subparagraphs, such as (e), were equally important.

31. Mr. FERRERO COSTA proposed that the word "could" should be substituted for "should" in the second line of paragraph 24.

32. Mr. ABOUL-NASR proposed the deletion of the word "perfectly" from the first sentence of paragraph 27.

33. The CHAIRMAN noted that there was no objection to those amendments and asked Mr. Ferrero Costa to read out his proposed amendment to paragraph 18.

34. Mr. FERRERO COSTA said that after the words "drew attention to", the remainder of the first sentence of paragraph 18 should be replaced by the following text: "the position of repudiation and concern repeatedly adopted by the various bodies of the United Nations regarding the human rights violations committed by the military Government of Chile during the past decade. Members of the Committee pointed out that this situation had also been a constant concern of various Committee members, because they considered that the human rights violations were affecting the proper functioning of the political system in Chile and the fulfilment by the Government of the International Convention on the Elimination of All Forms of Racial Discrimination, as reflected in the records of the Committee's previous sessions. With regard to the human rights situation in Chile during recent years, members of the Committee repeated what was pointed out in the resolution adopted on 8 March 1989 by the Commission on Human Rights, in which, among other things, concern was once again expressed at the persistence of serious violations of human rights, and in which, furthermore, the Chilean Government was urged to put an end to these situations and to continue adopting measures to permit the restoration of the rule of law in Chile and the full enjoyment of human rights and fundamental freedoms".

35. In the following sentence of the paragraph, after the words "It was also remarked", the words "that the human rights situation in Chile was rather precarious and" should be deleted. The rest of the paragraph could remain as it stood.

36. Mr. PARTSCH said that the Committee's report to the General Assembly should summarize the main elements of what members of the Committee had said and not repeat all the arguments that had been put forward. Since racial discrimination, not human rights, was at the centre of the report, a much shorter text of paragraph 18 was preferable.

37. Mr. ABOUL-NASR fully agreed with Mr. Partsch.

38. After an exchange of views between Mr. FERRERO COSTA and the CHAIRMAN, the CHAIRMAN asked the representative of the Secretary-General to read out for adoption by the Committee the part of the summary record (CERD/C/SR.846) which reflected Mr. Ferrero Costa's amendment to paragraph 18.

39. Mr. HOUSHMAND (Representative of the Secretary-General) said that the part of the summary record which corresponded to the proposed amendment (846th meeting, para. 42) read in the following manner: "The concern aroused during the past decade in a number of United Nations bodies, the Committee on the Elimination of Racial Discrimination in particular, by human rights violations under the Chilean military government was well known. He referred to the summary records of the meetings of the Committee devoted to the previous reports of Chile, between 1975 and 1985. Regarding the eighth report, he cited resolution 1989/62, dated 8 March 1989, of the Commission on Human Rights expressing 'its concern at the persistence of serious violations of human rights' (para. 6) and urging the Government of Chile 'to continue adopting measures to permit ... the full enjoyment of human rights and fundamental freedoms' in Chile (para. 7)."

40. The CHAIRMAN said he took it that the Committee wished to adopt that text as a basis for replacement of the parts of paragraph 18 which Mr. Ferrero Costa had proposed to amend.

It was so decided.

Paragraphs 13-29, as amended, were adopted.

Paragraphs 30-38 (Cyprus)

41. Mrs. SADIQ ALI (Rapporteur) proposed that in the third sentence of paragraph 32, the word "some" should be inserted before "members of the Committee".

42. The CHAIRMAN recalled that it had been decided that the formulation "some members of the Committee" would not be used.

43. Mr. SHAHI said that the decision not to use the word "some" had been taken in the particular context of Chile. The earlier part of the third sentence in paragraph 32 was based on statements by some members of the Committee with which he had not associated himself. To use the expression "members of the Committee" would create a difficult situation for him.

44. The CHAIRMAN said that the Committee had debated the question and had come to the conclusion that "members" did not mean the Committee as a whole.

45. Mr. SHAHI said that if the sentence was kept as it stood mention should be made of his reservation to the first part of the sentence, which read: "... members of the Committee once again wished to express their concern at the continuing state of affairs in Cyprus resulting from foreign occupation of a part of its territory".

46. Mr. PARTSCH subscribed to the reservation made by Mr. Shahi.

Paragraphs 30-38 were adopted, subject to that reservation.

Document CERD/C/37/CRP.1/Add.10 as a whole, as amended, was adopted.

Document CERD/C/37/CRP.1/Add.11

Paragraphs 1-15 (Burundi)

47. Mrs. SADIQ ALI (Rapporteur) proposed that the following should be inserted after the first sentence in paragraph 9: "One member maintained that, if Hutu confidence was to be gained, the Government would need to publish for the army, and for other State institutions, specific goals and monitoring procedures".

Paragraphs 1-15, as amended, were adopted.

Paragraphs 16-48 (Sweden)

Paragraphs 16-48 were adopted.

Document CERD/C/37/CRP.1/Add.11 as a whole, as amended, was adopted.

Document CERD/C/37/CRP.1/Add.12

Paragraphs 1-16 (Nigeria)

48. Mr. AHMADU, noting that Nigeria was a Federal Republic, proposed that, on page 1 of the document, the word "Nigeria" should be followed by ", Federal Republic of" and that, wherever the word "Nigeria" appeared in the text, it should be preceded by the words "Federal Republic of". Referring to paragraph 10, he proposed the insertion, in the first sentence, after the word "traffic", of the words "in narcotics". In the second sentence, the word "provinces" should be replaced by the word "states". In paragraph 13, the reference to "an equal number of atheists" in the third sentence should be replaced by the words "a large number of animists". In the second sentence of paragraph 16, the word "is" should be inserted between the words "Nigeria" and "expected".

Paragraphs 1-16, as amended, were adopted.

Paragraphs 17-26 (Libyan Arab Jamahiriya)

49. Mr. ABOUL-NASR, referring to paragraph 21, said that the word "Government" should be replaced by the word "authorities", since the Libyan Arab Jamahiriya did not have a Government.

Paragraphs 17-26, as amended, were adopted.

Document CERD/C/37/CRP.1/Add.12 as a whole, as amended, was adopted.

Document CERD/C/37/CRP.1/Add.13

50. Mr. GARVALOV said that, in the second sentence of paragraph 1, the figure "125" should be corrected to read "128".

Document CERD/C/37/CRP.1/Add.13, as amended, was adopted.

Documents CERD/C/37/CRP.1/Add.14-16

Documents CERD/C/37/CRP.1/Add.14-16 were adopted.

Documents CERD/C/37/CRP.2 and Add.1-4

Documents CERD/C/37/CRP.2 and Add.1-4 were adopted.

The draft report (CERD/C/37/CRP.1 and Add.1-16 and CERD/C/37/CRP.2 and Add.1-4) as a whole, as amended, was adopted.

STATEMENT BY THE UNDER-SECRETARY-GENERAL FOR HUMAN RIGHTS

51. Mr. MARTENSON (Under-Secretary-General for Human Rights) said that he wished to take the opportunity to thank the Chairman and members of the Committee for their dedication and hard work which were reflected in the report that had been adopted and which demonstrated the importance of their activities.

52. He had discussed at length with the Chairman the problems facing the Committee, not the least of which was the unfortunate financial situation. A large number of countries were in arrears, a fact which made it difficult to draw up plans for the future. Noting that the amounts due from individual countries were not very substantial, he hoped that it would be possible for them to make contributions. In that connection, he thought it quite appropriate for the Chairman to have suggested sending a letter to all States parties, drawing their attention to the serious financial situation. He himself had drawn the attention of the Secretary-General to the problem and efforts would be made to find a solution.

53. He hoped that the new biennium and the new attitude that seemed to be shown by the major donor countries would lead to a better financial situation.

54. In his opinion, the Committee had rightly focused on the twentieth anniversary of its existence as a means of manifesting its concern and of demonstrating the need to continue the fight against racial discrimination. In that connection, he expressed the importance of drawing the attention of world public opinion to the issue. He hoped that, in his capacity as

Co-ordinator for the Second Decade to Combat Racism and Racial Discrimination, he would have some means of contributing to that commemoration. Therefore, the Committee might not be entirely at the mercy of contributing countries.

55. Problems arose in dealing with 159 sovereign States, but the Committee could work consistently to inform public opinion through publications and the information media, including radio and television. Public opinion made an enormous impact once it was set in motion. Politicians throughout the world took public opinion into account, as could be seen in the case of disarmament, and he hoped that the same would be true with regard to human rights and racial discrimination.

56. The CHAIRMAN thanked the Under-Secretary-General for his words of encouragement and for his comments. All members of the Committee appreciated his personal interest in its work and the support he had given to its activities.

CLOSURE OF THE SESSION

57. After an exchange of courtesies, the CHAIRMAN declared the thirty-seventh session of the Committee on the Elimination of Racial Discrimination closed.

The meeting rose at 12.35 p.m.

Notes

1/ E/CN.4/Sub.2/384 and Add.1-7.

2/ Official Records of the General Assembly, Fortieth Session, Supplement No. 18 (A/40/18), paras. 561, 564 and 566.

3/ Ibid., para. 528.

4/ Ibid., para. 45 (u).

5/ Ibid., para. 456.

6/ Ibid., para. 463.

7/ Ibid.

8/ E/CN.4/1989/18/Add.1.

9/ Official Records of the General Assembly, Fortieth Session, Supplement No. 18 (A/40/18), para. 429.

10/ Ibid., para. 430.

11/ Ibid., para. 433.

12/ Ibid., para. 434.

13/ Ibid.

14/ Ibid.

15/ Ibid.

16/ Ibid., para. 435.

17/ Ibid.

18/ Ibid.

19/ Ibid., para. 436.

20/ E/CN.4/1989/7.

21/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 8 (A/36/18), para. 262.

22/ Ibid., Thirty-eighth Session, Supplement No. 18 (A/38/18), para. 268.

23/ A/43/624, annex, para. 62.

24/ E/CN.4/1989/7, para. 75.

25/ Official Records of the General Assembly, Fortieth Session, Supplement No. 18 (A/40/18), para. 508.

26/ Ibid., *Thirty-sixth Session, Supplement No. 18* (A/36/18), paras. 264 and 268.

27/ E/CN.4/1989/7, para. 74.

28/ E/CN.4/Sub.2/1989/9.

29/ See *Official Records of the General Assembly, Fortieth Session, Supplement No. 18* (A/40/18), para. 383.

30/ See letter dated 29 September 1988 from the Minister for Foreign Affairs of the Netherlands to the Secretary-General (A/C.3/43/5).

31/ "Study on the achievements made and obstacles encountered during the Decades to Combat Racism and Racial Discrimination" (E/CN.4/Sub.2/1989/8 and Add.1).

32/ United Nations publication, Sales No. E.79.XIV.4.

33/ *Official Records of the General Assembly, Forty-third Session, Supplement No. 18* (A/43/18), para. 215.

34/ *Ibid.*, *Fortieth Session, Third Committee*, 46th meeting, para. 27, and corrigendum.

35/ General Assembly resolution 1514 (XV).

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